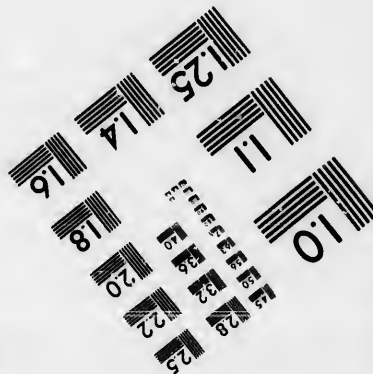
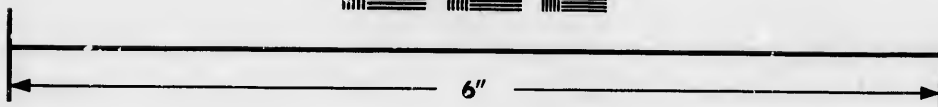
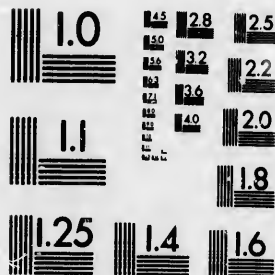


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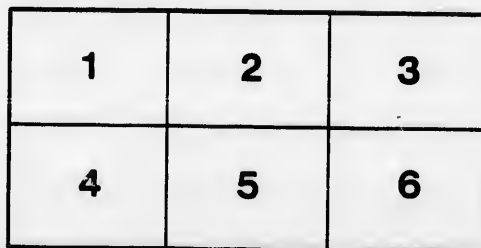
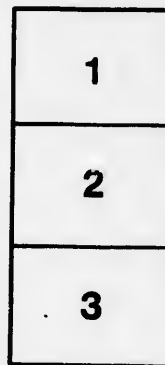
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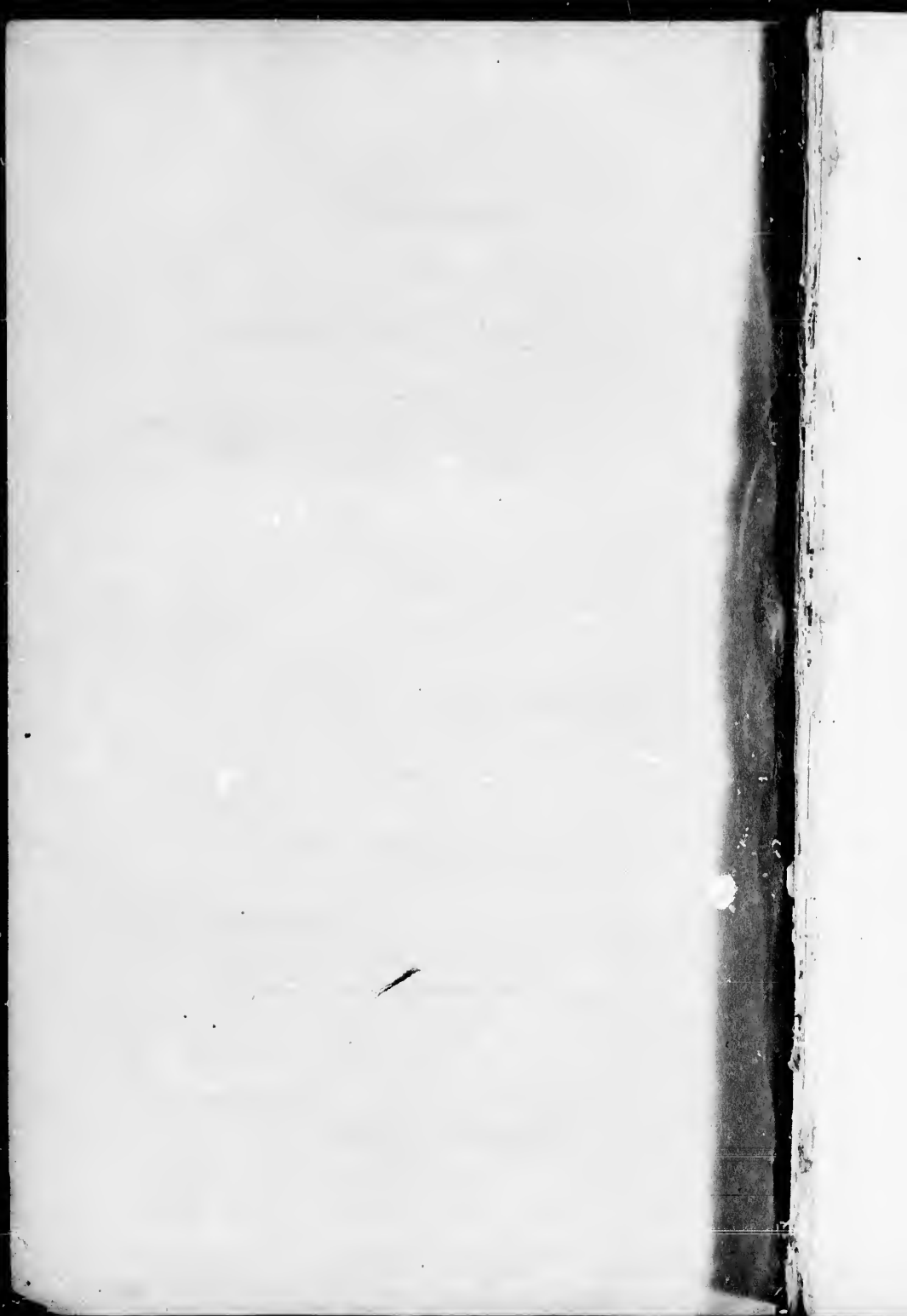
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AN  
EXPOSITION  
OF THE  
CONDUCT OF FRANCE  
TOWARDS  
AMERICA :  
ILLUSTRATED BY  
CASES  
DECIDED IN THE  
COUNCIL OF PRIZES IN PARIS.

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BY LEWIS GOLDSMITH.

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“Semperque recentes,  
Convectare juvat prædas & vivere rapto.” VIRGIL.

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London :  
PRINTED FOR J. M. RICHARDSON, 23, CORNHILL,  
OPPOSITE THE ROYAL EXCHANGE.

1810.

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## TO THE PUBLIC.

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A RESIDENCE of eight years in the metropolis of France, an intimate acquaintance with some of the most conspicuous persons in that country, and the different situations in which I have myself been placed, have given me opportunities which few others have possessed, of collecting information on the state of society in Paris, and the politics pursued by the French government and its agents.

This information I have formed a resolution of giving to the public, as soon as I can prepare it for the press ; and I flatter myself I can render it interesting without betraying *confidence* or *private friendship*.

As a first essay, which I now offer to the Public, I have selected the subject of the conduct of France towards America, which, from every thing I have read or heard since I returned to England, appears to me to have been much misunderstood.



I have given faithfully the *Berlin* and *Milan* Decrees, and the *British* Orders in Council, with a statement of the circumstances under which they were respectively issued; and I trust that the comparison I have made between the conduct of Great Britain and France respectively towards America, and the view I have given of the conduct of the latter, will be found to be candid and impartial.

I do not think I have made a single assertion in the body of the pamphlet which is not supported by the interesting cases detailed in the Appendix.

At the present moment the subject of itself is of important interest, and I hope I shall not have *diminished* that interest by the manner in which I have treated it.

THE AUTHOR.

London, 1st Nov. 1809.

# EXPOSITION,

&c. &c.

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IT is well known that the French Revolution produced a ferment in all the civilized states of the world. The principles on which it was *pretended* that revolution was founded, had been long *understood* and *recognized* in *this* country, and were the *real* foundation of the emancipation of the *North American Colonies*, and of their erection into an independent state.

America had for nearly ten years been recognized by the Government of this country as an independent state: and, in *that* character, had, without foreign interruption, carried on her commerce to all parts of the world.

The French Revolution burst forth in all its terrors. Excesses were committed which alarmed some even of the most *ardent partisans*, and assertors of the principles on which it was founded.

In those states which may be *supposed* to have possessed some degree of *political* freedom, parties were divided as to the policy of *favouring* or *opposing* it. The old Governments of Europe trembled: even ENGLAND, from whence the *pretended* \* principles had been adopted, took the alarm; and in the year 1793, became a party in the continental war which had been raised against *Republican* France.

America was connected with England in amicable commerce: it was not her interest to take part in the quarrel *against* France: it was not her interest to *oppose* England: the commerce of the world was open to her; and, if she could have been permitted to act as a *perfect neutral*, she would have reaped great advantage from carrying on the trade of the naval belligerent powers.

America was, however, at that time divided into two political parties, nearly equally balanced: the one attached to the cause of England, and called the English or Aristocratical Party; the other, from probably the *same* motives in addition to *others less honourable*, called the *Democratic* or *French* Party.

\* I say *pretended*; because the Leaders of the French Revolution only held them out as a *pretence* to the people, as I shall in a future publication prove by incontestible evidence.

America, remote from the scene of contest, could have had no individual interest in it, had it not been for her commerce; but this rendered it impossible for her not to be in some degree involved in the quarrel.

Washington endeavoured to keep the balance even. Adams, his immediate successor, shewed an evident propensity to favour the *English Party*: on this account, he became in some degree unpopular; and Jefferson, who followed him, seems to have pursued quite a *contrary* policy: he is *accused* of having favoured the *French*.

Soon after the accession of Jefferson to the office of President of the United States, Bonaparte assumed the reins of Government, and during the continuance of that Presidency, had become Emperor of France,

The commercial relations between America, on the one hand, and the two principal belligerent powers and their respective allies on the other, had become of great importance to America. The contending parties had, or supposed they had, each an interest in throwing obstacles in the way of the commerce of America with the other. The preponderancy of England on the seas was the great object of the jealousy and envy of Bonaparte: to destroy her commerce, appeared to him the only means of destroying that preponderancy:

and prohibition upon prohibition was issued to prevent the introduction into France, and the countries in subjection to it, of English manufactures and colonial produce. These prohibitions principally affected the Americans, who had become in a great degree the carriers.

They had in various instances endeavoured to elude the law of nations with respect to contraband trade: England did not so much want their assistance as France: they had first directly, and then indirectly, carried on the commerce between that country and her colonies, which she could not, from the relative condition of the naval power of England with her own, carry on for herself.

Several captures were made, and condemnations pronounced of American vessels found under such circumstances. Complaints were made on the part of the American Government to ours. It must have been wished by both the English and American Governments, that those disputes should be settled in an amicable manner.

It is not the object of the writer of these few sheets, to enter into a *long* discussion of the propriety or impropriety of the conduct of the two great belligerent powers towards America, nor of that of America towards each of them respectively; but to give a plain statement of facts, from which the unbiassed reader may judge for himself

of which of the two the Americans have had most reason to complain.

In the year 1806, the American Minister, Mr. Monroe, arrived in London for the purpose of concluding and signing a treaty of commerce with this country, jointly with Mr. Pinckney, the American Resident at the Court of St. James's.

Bonaparte was soon apprised of this negotiation: This monopolizer of domination immediately burst into a paroxysm of rage ;

“ Assum'd the God,

“ Affected to nod,

“ And seem'd to shake the spheres.”

HE DECLARED THAT IF THE AMERICAN GOVERNMENT SHOULD CONCLUDE A TREATY WITH GREAT BRITAIN, HE WOULD IMMEDIATELY CONSIDER AMERICA AS HIS ENEMY, AND DECLARE WAR AGAINST HER.\*

This denunciation prevented the *ratification* of the treaty which had been actually *signed* in London. Such was the INDEPENDENT spirit of

\* Perhaps my simp'le assertion of this important fact, unsupported by written proof, may not carry conviction to the mind of every reader. But I appeal to every Englishman and every American who knew me in Paris, some of whom are now in London, whether they do not know that I had opportunities of information which were within the reach of but very few private individuals.

America, and such her *impartiality* towards the two belligerent powers:—And to prove to the American Government that he was in *earnest*, he issued the famous Decree of Berlin in the month of November 1806, which is so often mentioned and so little known or recollected. It was expressed in these terms :

“ BERLIN DECREE.

“ The British Isles are in a state of blockade—

“ All trade and communication with Great Britain are strictly prohibited—

“ All letters going to or coming from England, or addressed to English persons, are not to be forwarded; and all those written in English are to be suppressed\*.

\* In consequence of this article of the Decree, orders were sent to all the clerks (*Commis*) of the Post-Offices, to seize all letters addressed to persons having English names. Two American Merchants, Mr. C. and Mr. S. then residing at Paris, waited on the Post-Master General, Monsieur Lavallette, a *Conseiller d'Etat* (Counsellor of State). They remonstrated with him on the hardship imposed by this Decree on the Americans; and represented to him that English and American names were in general so much alike, that it was impossible to distinguish them. They requested, therefore, to know how they were to act, with regard to corresponding in the English Language: the answer was “ Correspond in your own language.”!!! This *Conseiller d'Etat*, it seems, did not know that the English and American language were the same. But this needs not excite surprise, when it is known that Monsieur De la Vallette was originally a *Garçon Lemona-dier* (a Waiter in a Coffee House), afterwards a soldier, then a general, &c. &c.

“ Every individual who is a subject of Great Britain is to be made prisoner of war *wherever he may be found.*

“ All goods belonging to Englishmen are to be confiscated, and the amount paid to those who have suffered through the detention of ships by the English.

“ No ships coming from Great Britain, or having been in a port of that country, are to be admitted.

“ All trade in English goods is rigorously prohibited.”

At that period there was hardly any state or nation in *Europe* that could be called neutral; the Decree could therefore be construed in no other way than as pointed against the independence of *American* commerce.

The American Minister in Paris, General Armstrong, seems to have considered it in that light. No sooner was the Decree made known there, than he applied to the French Minister of Marine, requesting that he might be informed, whether it was applicable to American vessels, stating as a more especial reason for making this inquiry, that there were several American vessels



at that time in England ready to sail for America.

To this question the French Minister of Marine replied, that he would dispatch a Courier to his Imperial Majesty, to know his intentions on that subject; and shortly after, before he could have had an answer from Bonaparte, he sent a letter to General Armstrong to inform him that the Emperor had decided *that the Berlin Decree was not in contravention of the existing treaties between France and America\**.

The substance of this letter was sent to Mr. Monroe in London, who had it publicly made known to the merchants in this metropolis concerned in the American trade.

We shall now see what confidence the Americans were *justified* in placing in the Imperial faith of Napoleon.

At this period there was in the river Thames, an American vessel called the *Horizon*, Captain Mac Clure, cousin to the owner. She had been at Lisbon; when *there*, she had been chartered by the Spanish Government, to carry out certain articles to Lima, and to bring from thence a cargo in return to Spain. To complete this engagement, it was necessary for her to come to the port of

\* See the letter in the Appendix, with the remarks upon it.

London. She was lying there taking in her cargo at the time when this famous Berlin Decree, and the assurances of the French Minister of Marine upon it with respect to Americans, became known here. In full confidence of the faith that might be supposed due to the Imperial *decision*, she sailed richly laden from the river. On the coast of France, she experienced a very heavy gale of wind, and was driven on shore. The Custom house officers went on board and sequestered *provisionally* (provisoirement) both ship and cargo. The question was ultimately to be tried in Paris by the Council of Prizes\*. Mr. De la Grange, an intelligent, and *respectable* and *respected* man, Advocate for the Claimants, produced the letter of the French Minister of Marine in defence of his clients; it was to no purpose. He produced the charter-party signed at Lisbon before the promulgation of the Berlin Decree, between Captain Mac Clure and the Spanish Ambassador in that city: he urged that Spain was a friendly power, and not merely so, but that she was an active ally of France, and in *open hostility* with Great Britain, against *whom*, it was supposed, the

\* A person disposed to ridicule, and fond of a pun, might be tempted to call them the Council of BLANKS. They are *themselves* Blanks, because they have no freedom of decision according to *general* principles; and in every *individual* case they must decide according to the dictates of their *master*. They may be called the Council of *Blanks*, because no Claimant, however just his cause, how ever flagrant his proofs, ever draws a *prize*.

Decree was principally directed: Vain attempt! to use the language of the mighty Napoleon himself. The ship and cargo must at all events be confiscated; she was too rich a prize to be permitted to slip through the hands of the rapacious government of France. The ship and cargo were condemned.

In the course of this trial, if trial it can be called, the Council of Prizes took occasion to express their opinion on the Letter of the French Minister of Marine to Mr. Armstrong, in a manner which marks *their servility*, and their little regard to the assurances given by the administration of *one* country to the minister of *another*, requiring an official explanation of a doubtful measure.

They said that the Minister of Marine had stepped beyond his sphere, when he took upon himself to write such a letter; that a *ministerial* letter ought not to be admitted to destroy or invalidate an Imperial Decree, and it could not have that effect\*.

\* Some time ago, Mr. Baring published a very well written pamphlet, in which he took notice of the French Minister's Letter before mentioned, as an instance of French *forbearance* towards the Americans; but unfortunately for him, or for his fame, for candour and impartiality, he either did not himself know, or to suit his purpose, he did not choose that his readers should know, that the Horizon was condemned in despite of the letter in question. The same intelligent gentleman, in the course of his Work, states, "that the Berlin Decree was only issued to try the *temper of Great Britain*." This is not correct. It was *not* to try the temper of *Great Britain*, but to deter *Ame-*

On board the *Horizon* was a Mr. Mac Clure, brother to the owner of the ship and cargo ; he acted as supercargo : he came, impressed with the idea of the justice and impartiality of the “ enlightened Government of France,” as he had been taught to believe it by the documents published under the sanction of his own government ; he was furnished with the necessary passports ; he wished to be present at Paris while the cause was depending, in order to instruct his counsel and agents in person : he thought himself secure against all personal attack ; he found himself, however, under a woeful mistake ; his passports availed him nothing : he was arrested in the capital of that “ enlightened government,” and sent to prison on *suspicion* of being, What?—an Englishman ! The highest crime of which a man can be accused, who is found on the territory of France—whether Aristocrat or Democrat ; of the two the Democrat is the more odious.

He was permitted to be at large on *surveillance*\*, finding sureties to procure from America a

*visa* from entering into any amicable arrangement with this country. The cases of the *Horizon*, the *Paulina*, Captain Clarke, and the *Victory*, Captain Caleb Hopkins—prove that the Americans were the victims to the Berlin Decree before the second British Order in Council was issued.—See the Appendix.

\* We may be thankful that no single *English* word can adequately express this. Englishmen, be pleased that you do not yet know the system of *French* Police—God forbid you should ever know it by *experience*.

certificate, not of his being an American *citizen*, but of his having been *born* in that country.

The Americans *submitted* to this Decree, which so evidently infringed their rights as an independent and neutral nation. By this submission they shewed a manifest partiality to France.

OUR Government not wishing to make war with America, on account of this apparent partiality, were at last, after two months forbearance, under the necessity of adopting measures of retaliation against *France*, however the Americans might suffer in consequence of the inveteracy of the contest between the two belligerent powers.

Orders in Council were, therefore, published in the *London Gazette* of January 10, 1807, which, after noticing in the usual terms the unprecedented and unjustifiable violence of the Berlin Decree, proceed thus: "His Majesty is thereupon pleased, by and with the advice of his Privy Council, to order that no vessel shall be permitted to trade from *one* port to *another*, both which ports shall belong to or be in possession of France or her allies, or shall be so far under their controul, as that *British* vessels may not freely trade thereat, and the commanders of his Majesty's ships of war and privateers shall be, and are hereby instructed to warn every *neutral* vessel coming *from* any such port, and *destined to another* such port, to DISCONTINUE her voyage, and not to proceed to any

*such* port ; and any vessel, *after being so warned*, or any vessel coming from any such port, after a reasonable time shall have been afforded for receiving information of His Majesty's order, which shall be found proceeding to another such port, shall be captured and brought in, and together with the cargo shall be condemned as lawful prize."

What is there in this in the least resembling the Decree of Berlin ? By *that* Decree, the British Isles, that is the whole empire of Great Britain, are to be considered as in a state of blockade ; and no neutral ship is to be at liberty to enter a port of that country : nay, " all trade and communication with Great Britain are strictly prohibited." To whom ? To the *French*, who could not, previously to this Decree, have traded to Great Britain ? Surely not : this would have been a mere decree of supererogation. But to *neutrals*, to *independent* nations ; and of course, as there was hardly at that time any neutral, any independent commercial nation, except America, it was principally directed against the Americans, whose commerce with England was of more consequence to her, than that with all the world besides. But further,

" No ships *coming* from Great Britain, or *having been in a port* of Great Britain, are to be admitted."—No, not even to take in a cargo from France, either for America, their native country,

or for any other place for the purposes of general trade. A ship in *ballast*, which had come from a port in Great Britain could not be admitted into a port in France.

It must have been on this article that the Council of Prizes proceeded, when they condemned the *Horizon*; but even this did not justify their sentence; she had been, it is true, in a British port, and was going from thence; but she was not going to France; if she had, she might, under this article of the Decree, have been refused *admittance*; but the only consequence would have been, that she must have sought another market. She was stranded, as it is called, by the act of God\*, which, in correct language, means something which human foresight could not prevent: she was, however, condemned, *because* she had come from a *British* port, and perhaps *because* she was a *rich* prize. Even ships belonging to *hostile* powers, putting into an *enemy's* port, have been *relieved*, and sent to prosecute their voyage; but it seems, the *Droit d'Au-*

\* Much has been said against the humanity of MAXIMILIAN ROBESPIERRE; let us contrast his conduct on a similar occasion with that of NAPOLEON BONAPARTE on this. In the time of the Committee of Public Safety, an English transport coming from Germany with some French Emigrants on board, amongst whom were the Dukes of Choiseul and Moutmorency, was stranded near Calais. The unfortunate Emigrants were of course put into confinement, and tried by a Military Commission. They were all acquitted, by order of the Executive Government, upon the principle that stranding was an act of God, and that to condemn these men for coming to France involuntarily would be not only a violation of the laws of nations, but of humanity.

*baine* is not yet forgotten in France\*: the circumstance of the ship having been *stranded*, and a ministerial letter, expressing the decision of the author of the Decree with respect to the *non-operation* of it against the existing treaties between France and America, could not protect her.

Again: "All trade in English goods is rigorously prohibited." To *whom* prohibited? to the French? to the slaves under the domination or immediate controul of the Despot who assumes to himself the power of dictating in what manner men shall carry on their trade?—No; this had been done before: it was manifestly dictated to *Independent States*; and principally to the Americans, who could not bring to England a cargo of their own raw materials, or of the produce of any other country, and take back to America for their own consumption a cargo, whether of English manufacture or produce, or of any other country, which had once found its way to England.

What is his Majesty's Order in Council to this? It is manifest, that it was meant as a mere measure of retaliation against the Berlin Decree; but how short is it of retaliation? "No vessel shall

\* The truth is this, that it is not *forgotten* but *revived*: it was abolished in the first paroxysms of the Revolution; but has been restored with all its rigour by the great Patron and Protector of Nations, against the feudal barbarity of their rulers.  
—See *Code Napoleon*, chapter 1. art. xi.



be permitted to trade from *one* port to *another*, BOTH which ports shall belong to, or be in the possession of France, &c." What is there in this resembling the Berlin Decree? A neutral, in other words, an American, shall not be permitted to carry on the trade of France or her allies, while they cannot carry on their trade themselves—"or shall be so far under their controul, as that *British* vessels may not freely trade thereat." Wherever therefore *British* vessels may trade, *there* may *American* vessels trade, without interruption from Great Britain.

And what are the orders given to the Commanders of His Majesty's ships of war, &c.? To *seize* all ships of America that shall have been in a port under the dominion or controul of France, or to *prevent* such ships from being *admitted* to an English port? No! But to *warn* every neutral vessel coming *from* any such port; and *destined* to *another* such port, to *discontinue* her voyage, &c. She might go back to the port from which she had set out, and unload: she might go to any *other* port in the world, but one under the dominion or controul of France, and dispose of her cargo without molestation from the *British* cruisers. She was to be captured and brought in for condemnation, *only* in case of attempting to get into the destined *other* French ports, *after* such warning *given*.

This Order in Council was ineffectual with respect to America; no disposition appeared on the part of the Government of that country to resist the Berlin Decree; in consequence of which, the British Government thought fit to publish the following Order in Council, Nov. 17, 1807.

After taking notice of the inefficacy of the first order, it is said, His Majesty is, therefore, pleased, &c. to order, and it is hereby ordered, "That all the ports and places of France and her allies, or of any *other* country at war with His Majesty, and all other ports and places in *Europe*, from which, although not at war with His Majesty, the British flag is excluded, and all ports or places in the *Colonies* belonging to His Majesty's *enemies*, shall from henceforth be subject to the *same* restrictions, in point of trade and navigation, with the exceptions hereinafter mentioned, as if the same were actually blockaded by His Majesty's naval forces in the *most strict* and *rigorous manner*\*: and it is hereby further ordered and declared, that all trade in articles which are of the *produce* or *manufacture* of the said *Countries* or *Colonies*, shall be deemed and considered to be *unlawful*: and that every vessel trading *from* or *to* the said *Countries* or *Colonies*, together with all goods and merchandizes on board, and all articles of the produce or manufacture of

\* Following only the phraseology of the Berlin Decree.

the said Countries or Colonies, shall be captured, and condemned as prize to the captors."

Those who made no resistance to the Berlin Decree, nor even any serious remonstrance against it, have clamoured incessantly, and in the most virulent terms, against this *British Order in Council*, as a violation of the laws of nations.

Let those clamourers compare to this Order the Berlin Decree, and point out where the difference exists: they will, if they reason fairly, be obliged to admit, that this order is moderate in comparison with the Berlin Decree: it is but an *humble* imitation of that decree, intended by way only of *retaliation* to the French decree; but it is far from being a *complete* retaliation. The Americans, it is true, are like the ass between the hay; but they liked the bite on one side better than on the other; whether they have been *wise* in their choice, will be seen probably in the sequel.

Two enemies are contending: the Americans are perfectly neutrals to the quarrel; but for some reason known *only* to themselves, they submit *quietly* to the restraints arbitrarily imposed on them by the *one*; and when the *other* tells them you shall not lend my enemy a sword, with which he means to accomplish my destruction; they complain bitterly of this prohibition.

Let any advocate of American clamours against this Order in Council compare it to the Berlin Decree, to which it was *meant* to be an answer; and let him, if he *can*, point out in *what* it has *exceeded* that decree: exceeded! no! it will appear that the British Order is far *short* of the Decree—and not only so; but the severity of the order is mitigated by *exceptions*—These are,

I. Vessels, and their cargoes, which shall belong to *any* country *not* declared by this order in a state of blockade, and which shall have cleared out of some port of such country, either in Europe or in America, or from some *free* port in His Majesty's colonies, *direct* to some port in the colonies of His Majesty's enemies, or *direct* from *those* colonies to the country to which such vessels shall belong, or to some *free* port in His Majesty's colonies.

II. Vessels belonging to *any* country not at war with His Majesty, which shall have cleared out of any port of this kingdom, or from Gibraltar or Malta, under regulations to be prescribed, direct to the port specified in their clearance.

III. Vessels belonging to *any* country not at war with His Majesty coming *directly* from any port in this Order declared in a state of blockade, to *any* port belonging to His Majesty in Europe.

These exceptions, however, to exempt from

capture vessels entering or departing from any port *actually* blockaded by His Majesty's squadrons, or having *enemy's* property on board, or any other circumstances therein as stated in these exceptions, are subject to some restrictions. Certificates of origin obtained in neutral ports from *enemies' agents*, declaring the cargoes of vessels *not* to be of the produce or manufacture of His Majesty's dominions, are to subject to capture the vessels having such documents on board, after reasonable time for notification of this Order, at the port from which they clear out—vessels, which may have cleared out *before* this Order for any port declared in a state of blockade, to be *warned* not to proceed to such port, but to proceed to some port in this kingdom, Gibraltar or Malta; and if *after* such *warning* or *reasonable time* to have this Order known at the port whence they clear out, vessels shall be found proceeding to any port *declared* in a state of blockade, they shall be captured and condemned as prizes to the captors.

Much clamour has been raised against this Order—deputations have been sent to the Minister to ask what it *meant*; when the slightest knowledge of the English language, with a very small attention to the composition of the words, might have saved the *Constituents* of the Deputies, and the *Deputies themselves*, the trouble and the *ridicule* of such an inquiry. It seems to me extraordinary, that men of good sense could

doubt about the meaning. The Decree of Berlin is obscure, and *may* admit of *doubtful* interpretation: it was calculated and *intended* to entrap; and that it has answered its purpose in *this* respect, will be seen by the cases faithfully detailed at the conclusion of these sheets. But it seems out of the compass of the *English*, or of any *other* language, to express in words more clear, the *general* meaning of the order, or the cases which are meant to be an exception to it. It would be wasting words, and a prostitution of time, to attempt to give an explanation of the one or of the other: he that runs may read, and if *willing* to *understand*, may *after* reading understand.

Of the same date with the foregoing Order in Council, there is another, of which the substance is; "That vessels so *warned*, which shall come into any port of His Majesty's dominions, shall be allowed to report their cargoes for exportation, and to proceed to their *original destination*, or to any port at amity with His Majesty, or they may be *allowed* to *import* the said Cargo, on paying certain duties, in respect to all articles which may be on board, *except* sugars, coffee, wine, brandy, snuff, tobacco, which articles may be *exported* by licence to *ports* prescribed by His Majesty."

It has been represented that this order pretended to impose a duty on neutral commerce; it

has been said that by *it* every American ship, in order to avoid capture by *British* cruisers, must come into a *British* port, and pay a duty at the arbitrary will of the British government, before she shall be permitted to proceed on her *destined* voyage, wherever that might be. Thank God, the British Government, I mean the executive Government, has no such power. The King in Council might order ships found under such circumstances to be brought in and *confiscated*; and with infinitely more justice than exists in the Berlin Decree: but they *could* not, and I am sure they *would* not attempt to order neutral ships, at all events, to come into a port of Great Britain, and pay a duty before they should be permitted to proceed on their destined voyage.

But what is the order in question? nothing more than this, that being found in circumstances which the British Government have thought fit to consider as an act favouring their enemy, you shall not be permitted to enter the enemy's ports: we might, if we chose, declare you lawful prize; but we will not proceed so far: provided you desist from your intended voyage, the object of which was to assist our enemies, you shall be permitted to enter our ports, if you be so disposed, and to make the best market of your cargo there, with certain excepted articles, on paying a certain duty; and as to the articles excepted, you may go

to any port to be prescribed by his Majesty, having a licence for that purpose.

Then comes the Milan Decree issued December 17, 1807.

After a preamble, and allusion to the *last* order in Council, this *notable* Decree orders:

“ I. That *every* ship, to *whatever* nation it may belong, which shall have *submitted* to be *searched* by an *English* ship, or which shall be on her voyage to England, or which shall have paid any tax whatever to the English Government, shall be declared to be (*denationalisée*) *unnationed*, if such an un-national word can be admitted into the English language; or in other words stripped of the rights or privileges to which she was before entitled as a ship belonging to the nation of which her proprietors were subjects; to have forfeited the protection of her Sovereign, and to have *become* ENGLISH property.”

The second article attempts to give additional effect to the former. It is in these words:

“ Whether the ship *denationalised* by the *arbitrary* measures of the ENGLISH GOVERNMENT enter *our* ports or those of our ALLIES, or whether they fall into the hands of our ships of war or privateers, they are declared to be good and lawful prize.”



The ships visited and *merely* VISITED by English ships of war or English privateers, are to be *denationalised*, and declared out of the protection of their *Sovereign*: for an act *not* their *own*, but of a party whom they could not resist, they are to be confiscated: a traveller on Finchly Common is saluted by the excise officer, who suspected he is carrying on an illegal trade: he submits to be searched; nothing contraband is found upon him, and he is permitted to pursue his journey. But he meets afterwards with a band of smugglers, who ask him only whether he has been saluted by the excise officers? He answers yes!—Then, Sir, you are *our* prize; whatever you have belongs to us. This is the true interpretation of the Milan Decree.

But the ship is to be *denationalised* by the *arbitrary* measures of the ENGLISH Government. Now, what are these arbitrary measures? a ship of war, or a privateer meets a ship at sea; if she belong to an enemy, she may be legally captured; if she be a neutral, she may be searched; she is by force compelled to submit to this search, and is permitted to proceed on her voyage: but this search is fatal to her: “ she is, by this *arbitrary* measure of the ENGLISH Government *denationalised* and deprived of her rights; she shall not enter *our* ports, no! nor those of our *allies*, whose conduct and politics we take upon ourselves completely to controul, and to subject to our will:

———— Stat pro ratione voluntas.

If they enter they shall be confiscated: if they fall into the hands of our ships of war or privateers, they shall be declared lawful prize.

It has been stated in our houses of parliament, and also in some pamphlets, that *our* Orders in Council produced the second Decree of Bonaparte. In answer to this charge, I will take the liberty to quote a letter from Monsieur *Colin*, Director General of the Customs and Counsellor of State, dated Paris, the 17th of March 1808, addressed to the proper authorities in the sea-ports of France, Holland and Italy.

“ The sequestration of neutral vessels must be carried into execution according to the orders of his Imperial Majesty, which express in formal terms, that all neutral vessels must be detained under sequestration, which have been visited by the enemy, whether ANTERIORLY or *subsequently* to the Decree of the 17th of December, and consequently referred to the Council of Prizes.”

The substance of this letter appears in a memoire presented to the Council of Prizes, by Mr. De La Grange, Advocate for the captured in the case of the American Ship the Sally, Captain Jacob Hastings\*.

If Bonaparte had really wished to support

\* See Appendix.

his claim to the title of Champion of the Liberty of the Seas against the tyranny of the "Usurping Isle\*," as he has been pleased to style Great Britain, he would have done well to imitate the tyrant's conduct, in allowing a sufficient time to neutrals to be acquainted with the *existence* of his piratical orders; but he chose rather to adopt a conduct for the ocean, which JONATHAN WILD the Great, whom he seems to have taken for his prototype, established for his depredations on Terra Firma.

We have another Decree of Bonaparte, dated Palace of the Tuilleries, January 11th, 1808†, by which he holds out inducements to sailors to impeach their Captains.

"Art 1. Whenever a vessel shall have entered a French port, or that of a country occupied by our armies, any man of the crew, or a passenger, who shall declare to the principal of the Custom house that such ship comes from England, or her

\* About three years ago, Bonaparte, in one of his Speeches to his servile Senate, called Great Britain *L'Isle Usurpatrice*. This word was then new to the French language; it is the feminine of *Usurpateur*. The word was adopted. An eminent bookseller in Paris, of the name of *Moutardier*, published some time after a new edition of the French Dictionary, known by the title of *Dictionnaire de l'Academie Française*, with an Appendix of newly-invented words since the Revolution, and the names of the persons who introduced them. Opposite to the words "*Usurpateur Masc.*"—" *Usurpatrice. Fem.*"—was placed the name of *L'Empereur Napoleon*, who immediately ordered the bookseller to be arrested, and every copy to be seized, wherever it was found!

† See the London Papers of the 25th of January 1808.

colonies, or countries occupied by English troops, or that she has been *visited* by any English vessel, shall receive a *third part of the produce* of the nett sale of the ship and cargo, provided his declaration be found correct."

The second and third articles prescribe the form for the interrogatories.

As a sample of the execution of this decree, let the reader peruse the following case :

Captain Ralph Linzee was condemned on the denunciation of his crew, that he had a *brother* in the British Navy ; this crew were *properly* rewarded for their perfidy ; they were pressed into the *French* Navy at Porto Ferrajo, and never received a shilling for their denunciation.

Linzee\* was treated in a most barbarous manner : he was confined in a common dungeon at Porto Ferrajo ; was not suffered to make a protest, or converse with a living creature until his ship and cargo were condemned : he wished to go to France, in order to appeal to the Council of State.

General Armstrong sent him a passport, countersigned by Fouché, Minister of *Police* : the Commissary of Marine at Porto Ferrajo refused to let him proceed, alleging that the passport ought to have been countersigned by the Minister of *Marine* : it was sent back to Paris for this purpose,

\* The name of his ship was the *Grace*. I have seen his *subsequent* protest, from which these facts are taken.—The Case is detailed in the Appendix.

and at length Captain Linzee was permitted to depart.

The object of these proceedings was merely to gain time, in order to prevent Linzee from stating the hardship and oppression which he experienced: and the better to accomplish this object, he was constantly attended by a guard, who was ordered to see that he should have no opportunity of writing. His appeal was ineffectual.

It would be an insult to *English* jurisprudence to suppose it *possible* that a similar instance could be found in the conduct of *England* towards America.

To return for a moment to the Milan Decree, which condemns to confiscation every neutral vessel that has been met at sea by an English cruizer and searched by her. The French word in the Decree is "*visé*," which, in English means *searched*: a sworn Interpreter to the Council of Prizes, whom I well know, was employed by that Council to translate the documents found on board of an American ship which was brought in as a prize: he found in the log-book that the ship had been *hailed* by an English man of war, and permitted to proceed on her voyage: the word "*hailed*" he knew did not correspond to the word *visé* (searched): he translated it into the corresponding French word "*hélé*,—" He was well acquainted with the *English* language, as he was with the French, and he perfectly well knew the import of the terms:

But the Council of Prizes thought *they* knew better; they would have the world "hailed" translated into "*visé*" (searched) to answer the words of the Decree: the translator refused to make the alteration, because he thought it contrary to his oath as a sworn interpreter. He was never employed again to translate for the Council of Prizes.

The Council of Prizes is composed of twelve members and a president. The present president is Monsieur Berlier, who, in the time of the directory, obtained the name of Berlier *Otage*\*, from the circumstance of his having proposed the Law of Hostages. A procureur Imperial, who at present is M. Collet Descotils, an intelligent and very honest man, and a substitute †.

\* Mr. *Berlier*, when Member of the Council of 500, in the Directorial Government, proposed a law to detain as hostages all those persons whose relations were Emigrants, and to make them responsible for their conduct. His motion was negatived. At present the relations of those who are subject to the laws of Conscription are responsible for them. And if a son, or a nephew, or even cousin, is not forthcoming when called upon, the nearest relations, either male or female, are obliged to procure a substitute, or are subject to be tried by the *Tribunal Correctionnelle*, for aiding and abetting the evasion of a Conscript. The punishment is two years imprisonment, and a fine from one to five thousand francs, according to the means of the parties. This is done on purpose to induce people to give information to Government, if they suspect their relations intend to avoid the Conscription laws. Thus are persons called upon to act as spies or denunciators on their own relations.

† The last substitute, to whom no successor has been appointed, was Monsieur Florent Guyot, an Ex-constitutional, now a prisoner in the "Hôtel de la Force," one of the strongest prisons in Paris, on accusation of conspiracy with others to assassinate Bonaparte: his companions in misfortune are Jacquemont, Ex-tribun, and late Chef de Division at the Minister's of the interior, Generals Mallet and Gilliet. In this conspiracy were also implicated Garat and Tracy, Senators, and General Lemoine. This accusation was believed in Paris

The proceedings are private; the public is not admitted to hear the debates: they are carried on *huis clos*, which is an old Flemish expression, adopted into the French family, and means "a house shut up."

Yet it is not altogether "HUIS CLOS:" The advocate presents his printed memorial to the Judges, which has been probably circulated beforehand amongst all the friends of the party in Paris. The Procureur General, (Attorney General, if it be not profanation to the ear of an English reader to give a literal translation of the Title,) the *Procureur General de sa Majesté Imperiale* is always Counsellor for the CAPTORS, because *Sa Majesté* has an interest in the condemnation.

When a ship and cargo are sold, the produce of the sales is deposited in the *Caisse d'Amortissement*, a public establishment for the extinction of the national debt, and one third of the produce goes to government.

The *Procureur General* is in effect the Chief Justice, though he has not the name; he sees, beforehand, as well as the Judges do, the *memoires* of the parties, and has personal conversation with them and their friends: He sums up as it is called

to be an idle tale, worked up into a conspiracy by the *Préfet* of Police, for the purpose of destroying the friends of Fouché the Minister of GENERAL Police; this to a certain extent succeeded. They were committed to prison in May 1808, and in June last they were still there.

\* Sinking Fund.

in this country, or to use the French phrase, he draws his CONCLUSIONS, which are in almost every instance an *Imperial Decree* to the Judges, who whisper together, and in general *decide as he has concluded*. But this is not enough for Bonaparte. He wishes to know *personally* whatever passes in the Council of Prizes: he has his *spy* there, one of the pretended judges who, at present is Monsieur CAMUS LE NEVILLE. When the *conclusions* of the Procureur General are not quite *conclusive*, which *sometimes*, though rarely happens, this gentleman always directs the deliberations of this immaculate Court of Justice.

About two years ago a Decree of Bonaparte excluded all neutral ships from the Elbe and Weser, and directed that the French authorities at the mouth of those rivers should apprise the Neutrals of this Decree and not *suffer* them to enter. They *were*, however, suffered to enter *quietly*: but, when they reached Hamburgh and Bremen, they were sequestered, and afterwards *condemned* by the Council of Prizes at PARIS. A Monsieur Dukerque, merchant at Hamburgh, went as agent to Paris, for claiming those neutrals, but his efforts were unsuccessful.

It must, however, be admitted, that this conduct to the Americans by Bonaparte is not without a precedent; he is not the original of all the measures he has pursued; though he is



very ready to adopt every thing in the conduct of former depredators, which he thinks will suit his views. He likes to follow *great precedents*, when they answer his purpose.

The people of America have been plundered and pillaged ever since the beginning of the French Revolution. The Americans furnished the French from the beginning with the means of subsistence; they thought it would be a beneficial commerce; but the adventurers have been woefully deceived: few of them indeed have been paid in full, and some nothing at all.

In the year 1802, when the French obtained Louisiana from the Spaniards, they sold it to America for a certain sum, which was reduced by four millions of piastres, to be applied by the French government to answer the claims of American citizens on that government.

The New Jersey, with a cargo of great value, belonging to Nicklin and Griffiths, merchants, of Philadelphia, was on her voyage from China to the latter city taken by the French, and carried into St. John's at Port Rico. General Hedouville, who was Governor General of the West-India Islands, then resided at St. Domingo: he ordered the ship to be sequestered on *suspicion* that she and her cargo were English property; and the affair to be referred to the Council of Prizes in Paris. The American

owner, fearing that the cargo would spoil, deposited 400,000 piastres with General Hedouville, to obtain a *main levée*\*, and to be permitted to send away the ship and cargo to the place of her destination. The Council of Prizes at Paris declared the capture to be *illegal*: but General Hedouville having expended for his Government the money deposited, gave bills for the amount on the Directory, who being without a *sous*, could not honour the bills. The matter stood over till the affair of Louisiana, before mentioned; it was of course expected that Nicklin and Griffiths would be paid their demand in full. This was not the case. In this instance there may be some appearance of justice; had Nicklin and Griffiths been paid in full, the other claimants could not have received a farthing.

This affair gave rise to a great deal of discussion in America, between Nicklin and Griffiths on the one hand, and General Armstrong on the other. The General was blamed for not having insisted on their full claim; but it is not the object of these few sheets to enter into private disputes.

When the expedition was fitted out by Bonaparte for St. Domingo, under the husband of his

\* A *main levée* is in general equivalent to what we call a replevin; but in this case it is rather correspondent to an "Amoveas Manus."

sister, General Leclerc, now the Princess Borghese, the Americans supplied that colony for the use of the French invading it. Generals Leclerc, Rochambeau, and Ferrand, gave drafts or orders for payment on the Minister of Marine in Paris; but not one of these drafts has been paid, unless the following case may be deemed an exception.

In the short interval of peace, if peace it can be called, a Mr. Allsop was sent to Paris by the house of Messrs. Lindo and Co. merchants in London, to negotiate bills drawn by Le Clerc on the French Minister of Marine, which had been accepted by him for stores furnished by Mr. Lindo's house at Jamaica, for that colony.

This person negotiated *some* of the bills, and was proceeding to negotiate *others*. This was a crime sufficient to deprive him of his liberty. It was said he *knew* they would *not* be *paid*: he was immured in prison for some time; but was at last discharged; and by some extraordinary circumstance of good fortune, Mr. Lindo was paid.

Truth and its connection with the subject on which I am writing, compel me here to relate an affair which happened in St. Domingo during Rochambeau's command in that island. I state it with reluctance, because he is now a prisoner in this country, and because, if he should ever return to his *own*, it is probable he will find himself in a worse

situation than that of a prisoner *here*: but *not* for the transaction which I am now going to relate.

General Rochambeau, when commander-in-chief of St. Domingo, had a dispute with General Clauzel, and some other officers; he had them all arrested to the number of sixteen. An American vessel happened to be there, and consigned to Mr. Anthony Laussat, merchant in Port-au-Prince: she belonged to Smith and Ridgeway, merchants, of New-York; she was taking in a cargo for America. General Rochambeau sent for the Captain, and told him to prepare for sea in twenty-four hours, to take General Clauzel and suite on board, and to land them in France, America, or (*ou à l'enfer*) in hell. The Captain remonstrated that his ship was only half full, that his masts and rigging were not in order, and that his ship was leaky.

The General answered that she must depart at the time mentioned; otherwise he would have him shot. The commander of the vessel went to the Port-Captain, entreating him to examine her, and report to the General whether it was possible for her to put to sea in that state, without endangering the lives of the persons on board. The Port-Captain confirmed to General Rochambeau the American Captain's first statement, but without effect. The vessel was compelled to put to sea. After having been out three days, the ship and cargo

were lost on the shores of the Floridas ; though fortunately the people were saved. Till this hour Mr. Ridgeway, who is the American Consul at Antwerp, has not received a farthing of compensation ! The loss was estimated at six thousand pounds sterling !!

Here a question naturally arises: What part has the Government of America taken in this affair ? The reply is easy : it appears evident that they have never taken *any* part. They have not thought fit to interpose with their great and powerful ally, who guides the destinies of France. The experiment might be *ungrateful*.

I state as a fact that Mr. De la Grange, the able and disinterested advocate for most of the unfortunate Americans in Paris, receives no kind of assistance from the American *legation* there, though sometimes in his professional capacity he requires it.

General Armstrong is admitted to be an intelligent and firm man, and his *private* character without exception. It is supposed he guides his conduct in conformity to the wishes of his GOVERNMENT.

While the Americans make such loud complaints on the asserted violation, by the ENGLISH

Government, of the law of nations, in searching on board their ships for *English seamen*; let us see how they are treated in France.

All the crews of the ships taken in the manner before stated, were made prisoners of war, and sent to the different depôts. Hundreds of Americans taken on board of British merchantmen are now prisoners there. They have been reclaimed by the American Minister, but in vain. About twelve months ago, some few were liberated; but the order was countermanded, and they were retaken.

It may perhaps be argued, and with a degree of *plausibility*, by those unacquainted with the laws of nations, that these Americans, neutrals, were found on board the *ships* of an enemy; this would be correct, if they had been found on board an enemy's *ships of war*, but they were on board *merchant* ships. But, granting that which, on no principle of the law of nations, can be granted, that this conduct of the French Government towards these poor individual Americans could be palliated or excused; what shall we say to the clamour raised by the partisans of America against the seizure from the Chesapeake, of *British* seamen, acknowledged *deserters* from *British* ships of war!!

When Bonaparte was at Bayonne in May last year, organizing robbery and murder in Spain; an

*American* vessel arrived at L'Orient, under a flag of truce from her own Government, with dispatches for General Armstrong, and a bag of commercial letters on board, and also a messenger (Lieutenant Nourse). This vessel was to proceed immediately to England, as she had clearly a right to do as a neutral.

In the first place, the vessel was embargoed: the Messenger, however, was allowed to proceed to Paris; but the dispatches were sent to the Emperor, for his previous perusal\*, and were not till a fortnight afterwards transmitted to General Armstrong. Such an *independent* situation does the American Minister hold at Paris; and such profound regard has the magnanimous Napoleon for the rights of neutral and allied nations!!

The commercial bag of letters was forwarded to the office of Fouché, Minister of General Police, where the letters being read, about one half were delivered, and the other, because, as is supposed,

\* In the office of the French Minister for Foreign Affairs, there is a collection of *fac similes*, impressions of the various hand writings and arms of Sovereigns, Ministers, and of all distinguished men in Europe and in America. Bonaparte has neither much difficulty nor qualms of conscience to open dispatches addressed to Ministers accredited to him. By such means he procured easily the surrender of Magdeburgh—a forged letter, purporting to be from the King of Prussia, ordered General *Kleist*, the Governor, to evacuate that fortress, and to join the king on the Oder! This letter was sealed with a seal resembling that of the King of Prussia. The Governor was, therefore, easily imposed upon.

they contained some political remarks, were suppressed.

Lieutenant Nourse, though having dispatches for the American Envoy in London, was detained six weeks in Paris.

A similar circumstance occurred in the case of another flag of truce, which arrived at Havre some time after; but things of this kind do not transpire in America. The agents in Europe of the American Government have, in general, too great a predilection for their august ally to make a faithful report of such infamous transactions.

In *justice*, however, it must be admitted that the Great Regenerator of Governments and of nations, the *champion* of the liberty of the *seas*, and of the international code, acts with some degree of impartiality. He treats his own *slaves*, and the *subjects* of his brothers, no better than he does the *citizens* of *neutral* states.

The case of Messrs. Faesch and Co. merchants of Amsterdam, which is given in the Appendix, deserves attention\*.

\* When the war broke out between Prussia and France, upwards of two hundred Prussian vessels were embargoed as a preparatory step to condemnation. It was proved that all these vessels were Dutch property. Nevertheless they were all condemned.



A *French* merchant, who had been settled at the Havannah, came to France with his ship; she had been visited by the English, of course, as supposed to 'e *American* property. On the arrival at Bourdeaux, ship and cargo were condemned; and the merchant, for having in a memorial made a spirited remonstrance in strong language, in which he said that the English were more merciful to him than his own people, was sent to the Temple for six months!!

The house of Buff and Co. at Paris, in consequence of a Decree permitting cotton to be introduced into France from Macedonia, imported a considerable quantity of that article. In the interior of Greece there are no *French Consuls*; and consequently there could be no *certificat d' origine*; but *experts* (persons skilled in the article) on the frontiers of Hungary, and the Austrian authorities there, furnished certificates that the cotton came from Greece. The cotton was seized at Strasburgh, and ultimately condemned at Paris!!

Several other houses in France suffered most materially from the iniquity of this cajoling Decree.

These Decrees ought to be made as publicly known as possible, because the com-

mercantile world are marked as the victims of them.

When at Bayonne in May last year, this subtle tyger was plotting the means of drawing within the reach of his grasp the unfortunate and misguided Royal Family of Spain: he issued a Decree, permitting colonial produce to be sold for home consumption, which should be taken by privateers or other ships of war. Till then the property could be sold only for exportation, by reason of which prize-goods sold for a mere trifle. To enhance the value, therefore, he pretended to permit them to be sold for home consumption: but mark the consequence.

This Decree induced a number of merchants from Holland, and elsewhere, to order colonial produce from England: but at the same time they intended to send out a privateer to take them, it being hinted that the French Government winked at this.

Bonaparte caused private circular letters to be sent by his Minister of Marine, and by Mr. Colin, one of his *Conseillers d'Etat*, and his *Directeur General des Douanes* \*, to the different authorities

\* Comptroller General of the Customs.

in the sea-ports of France and Holland, ordering them to confiscate all property brought in by the *French* privateers, unless it could be proved that the ships in question made a proper resistance, and were captured *en bonne forme* !!!

What resistance can a merchant ship make against an armed force fitted out on purpose to attack her, while by this insidious Decree, she was lulled into security?

Luckily for the merchants, it was soon whispered that such circulars had been sent, and they countermanded their orders.

Every six weeks or two months, when he wanted to extort money from his brother Louis\*, or by *his* means, he permitted the entry into France of colonial produce; but frequently, when the goods were at Antwerp, a counter Decree appeared, by which they were to be confiscated. This happened to a number of merchants at Antwerp in October, 1808.

In May last, several cargoes of colonial produce were advertised for sale at *Flushing*: in conse-

\* Louis is an unwilling king; he is considered in Holland as a good man, a friend to the commerce of that country, and adverse to his brother's measures; but he is obliged to obey.

quence of the Decree which had permitted such articles to be sold for home consumption, they fetched a comparatively high price.

After the sale, the purchasers wrote to Mr. Colin at Paris, for the necessary permits; but to their astonishment they were informed by that gentleman, that his Imperial Majesty had changed his mind since the passing of the Decree, and that no permission could or would be granted.

The purchasers, in this dilemma, resolved on the dangerous experiment of smuggling their goods along the coast to France. They sent them along shore to Gravelines. They were there seized with their property. The cargoes were condemned; and the persons sent to Boulogne, where they were to be tried as spies. They were respectable inhabitants of Dunkirk; and Mr. Coffin, the American Consul at that port, being intimate with Mr. Devilliers, Commissary General at Boulogne, contrived by his generous exertions to save their lives.

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THE chief object of these few sheets, is to prove that those who have cast so much blame on our Orders in Council, with respect to neutral navigation, have laboured under a gross mistake in im-

puting to *them* our disputes with America; and to shew by an historical deduction that they are properly to be imputed to the senseless and mad Decrees of him who takes upon himself the title of assertor of the freedom of the seas against their tyrant; that those Orders in Council are even moderate efforts at self-defence against a determined enemy, and a pretended friend insidiously acting in conjunction with that enemy for the destruction of our commerce; and that the reader may judge how far America has or has not been impartial in her conduct towards the two contending powers.

I have perhaps here and there indulged in some degree that indignation, which every honest mind must feel, on contemplating, with sufficient knowledge of the facts, the egregious usurpations and insolence of the ruler of the destinies of France, and the tame and uncalled-for submission of the Government of America and their marked hostility to England. But I can vouch for every fact that I have stated; and justify every conclusion or remark I have made.

The Cases contained in the following Appendix, will carry conviction to every unprejudiced mind; they are extracted from printed Memoires of the proceedings of the Council of Prizes at Paris, now in my possession\*.

\* They may be seen at the Publisher's.

I will add but a few observations more.

A gentleman, to the veracity of whose report I can trust, had an opportunity of seeing a distinguished Member of the Council of Prizes, in relation to the capture of an American vessel: the gentleman in support of his argument cited a passage from Vattel; to which the Frenchman jocosely replied:—"WE know nothing of *public* law, or what YOU call the law of nations: we must follow the Decrees of the Emperor: we leave it to you Englishmen to speak of it at this moment. Your Lord Auckland must be very simple indeed to trouble himself about it at this moment\*."

This was in allusion to a speech of his Lordship, mentioned in that day's paper, in which he was represented as complaining of the conduct of the British Government as incompatible with the laws of nations.

The Member of the Council of Prizes alluded to knows perfectly well that Lord Auckland is a consummate statesman, a scholar, and a gentleman; but Frenchmen in office, or out, cannot conceive how persons of rank and condition can make any apology for the conduct of Bonaparte,

\* *Nous ne connaissons pas le droit public; nous laissons cela à vous autres. Il faut s'en tenir aux décrets de l'Empereur. Il est bien bon votre my Lord Auckland, de s'en occuper à cette heure.*

or how they can condemn any measure which the enemies of the tyrant adopt against him. Frenchmen know him well, and of what he is capable.

“ *We cannot,*” continued the same Gentleman, “ go so far as Sir *William Scott*, who said, that if he were sitting at Stockholm, he would give his opinion as in London. *We are not quite* so independent.”

I have no hesitation in saying, that the learned and enlightened judge of Doctors Commons cannot be more respected for his knowledge and integrity in England than he is in France.

But nothing excites greater astonishment in France, than the credulity of our underwriters at Lloyd’s Coffee-house\*.

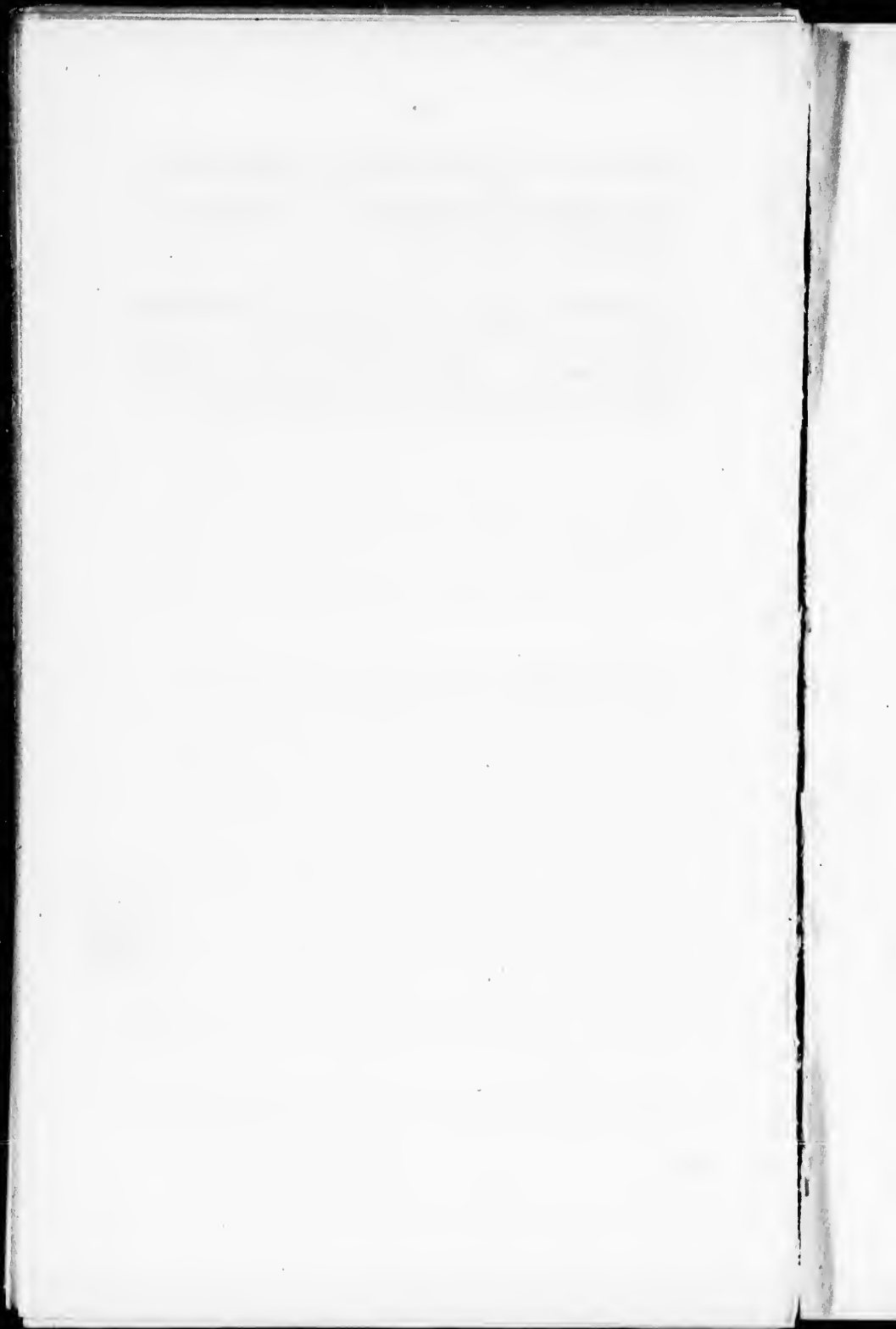
The pamphlet of “*War in Disguise,*” excited much interest in France, and was read with much avidity by those who could obtain it. It was translated for the use of the Counsellors of State; so was the reply of Mr. Maddison, the present President of America; but the first was considered as the more correct statement; as it was well known in France that all the trade which was carried on

\* I had in my possession, and believe I have them still, though I have mislaid them, some documents by which I could incontestibly prove the above assertion. On some future occasion I may perhaps be able to lay them before the public.

from that country, was carried on by means of neutral agents, who neutralized the property for a commission of 10 per cent.

Upon the whole, it is a poor recommendation in France to write or to have written in favour of the measures adopted by the respective governments of that country since the Revolution!





## APPENDIX.

*Copy of a Letter from Mons. Decres, Minister of the Marine and of the Colonies, to General Armstrong, American Minister at Paris, dated 24th December, 1806 \*.*

I HASTEN to answer the note you did me the honour to address to me on the 20th of this month.

\* When General Armstrong received the above letter, he waited on the Minister of Marine, to learn from *him* all the explanations which that Minister wished General Armstrong to obtain from the *Prince of Benevento!* who was at Berlin with his Imperial master. The result of that interview was, that General Armstrong, knowing that no French Minister can take upon himself to give an interpretation to Bonaparte's decrees *without his consent*, was therefore so fully convinced that the Minister's letter would be acted upon, that he lost no time in communicating the same to the American Legation in London. At all events, the *Horizon* having been *stranded*, ought not to have come within the meaning of any decree.

It is also necessary to observe, that as the Berlin Decree was only intended against America, Bonaparte's intentions were made known to the Minister of Marine at the same time that he forwarded to him his Berlin Decree. Thus, while the Decree was held out to the Americans *in terrorum*, the above letter was intended to delude them into an heedless security. I have heard even some of the Members of the Council of Prizes say, that the letter was only intended "*pour mystifier les Americains!!!*"

I consider the Imperial Decree of the 21st of November last as thus far conveying no modification of the regulations at present observed in France with regard to neutral navigators, nor consequently of the Convention of the 30th of September, 1800, (8 Vendemiaire 9th year) with the United States of America.

But although, by this answer, the four questions upon which your Excellency has desired to know my opinion, have been implicitly resolved, I think I can add, that the declaration expressed by the first article of the Decree of the 21st of November, not at all changing the present French laws concerning maritime captures; there is no reason for inquiring what interpretation, restriction, or extension, may be given to this article.

2dly, That seizures contrary to the existing regulations concerning cruizers, will not be allowed to the captors.

3dly, That an American vessel cannot be taken at sea for the mere reason that she is going to a port of England, or is returning from one; because, conformably with the 7th article of the said Decree, we are limited in France not to *admit* vessels coming from England or the English colonies.

4thly, That the provisions of the 2d and 5th articles of the said Decree naturally apply to foreign citizens *domiciliaied* in France, or in the countries occupied by the troops of His Majesty the Emperor and King, inasmuch as they have the character of a general law; but that it will be proper that your Excellency should communicate with the Minister of Exterior Relations as to what concerns the correspondence of the citizens of the United States of America with England. I pray your Excellency, &c.

DECRES.

P. S.—It will not escape General Armstrong, that my answers cannot have the developement which they would receive from the Minister of Exterior Relations; that it is naturally to

him that he ought to address himself for these explanations, which I am very happy to give him, because he wishes them, but upon which I have much less positive information than the Prince of Benevento.

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No. 1.

*Case of the Victory, Caleb Hopkins.*

THIS man, entrusted with the command of an *American* ship called the *Victory*, sailed from New York on the 25th of July, in the year 1807, with a cargo for Cherbourg. On the 30th of August following, he was met by an English privateer, called the *Cochrane*, and carried into Plymouth.

His papers had been seized by the privateer; some hours after he had anchored, he was conducted on board the ship of the Port Admiral, where he found his papers, and was told that he might pursue his voyage to Cherbourg, without interruption.

He set sail from Plymouth, and arrived at Cherbourg on the first of September. He had hardly cast anchor, when he was boarded by a boat from a man of war; he informed the party of his short detention at Plymouth; and as they understood but imperfectly *his* language, and he did not understand theirs, he sent his documents on board, and offered them his journal, which they refused.

The next day another boat assailed him: he made the same declaration he had made to the former, and as the same diffi-

culty of mutual understanding existed, he was conducted on board the frigate "Le Departement de la Manche\*."

The American went down to the cabin, where he expected to meet the officer on guard, but he saw only a young man about sixteen years of age, who was busied in writing.

As they could not understand one another, the lad called the surgeon, who spoke a little English. The surgeon interpreting, asked the Captain whether he was an *Englishman*? he replied that he was "*a real Yankey.*"

He was then asked, as he understood, from what port he had come? of what his loading consisted? and how long he had been on his passage?

When he had answered these questions, a written paper in French was presented to him; he was asked to sign it, as *a mere form* necessary for his admission into the harbour. He signed in confidence without knowing the contents, as he could not read it, and the surgeon who acted as interpreter could not translate it.

The next morning, the 3d of September, he went into the inner harbour, and the Commissary of Police having come on board to make his visit, the Captain declared to him, without hesitation, his detention for some hours in Plymouth roads.

On the 4th he went with his crew to the custom-house, where he voluntarily made the same declaration.

The Members of the Board then observed to him that, on board the frigate, he had *signed* a declaration, "that he had *not* been in England."

He answered that nothing of the kind had been asked him; that he had signed, in confidence, a writing which he did not understand, and that he must have been *drunk or mad*, to have declared that he had not been in England, as the fact declared by him at the moment of his arrival was known by all his crew, and written at length, on his journal.

He was permitted to land his cargo. It was almost all on

\* The names of persons and ships are immaterial to the narration of facts, but I insert them, that the partisans of French politics may not suppose that I speak without authority.

shore, when goods, ship, and tackle, were all seized at the request of the Custom-house, on the 21st of the same month of September.

He was stripped of every thing: he wished to go to Paris to defend his rights: for eight months he solicited a passport without success: he was starving at Cherbourg, and in complete ignorance of what was passing in the council of Prizes, when at last he was informed that his ship and her loading were confiscated to the use of the State.

Thus this vessel was condemned by virtue of the Berlin Decree.

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## No. 2.

### *Case of the Paulina, Captain Clarke.*

THE *Paulina*, Clarke, of Baltimore, sailed from Morlaix to Guernsey, with a cargo of wheat for neutral account, consigned to the mercantile house of Brock, Laserre, Maingy, and Co. at the latter city.

In the month of September, 1806, Captain Clarke signed a charter party to proceed to Malaga in ballast, to take in a cargo of wine, fruit, and wool, from the house of Maury, Brothers, and Co. and from thence to proceed to England and Riga; the whole for account and risk of Mr. George Bimbel, merchant, of Riga. The *Paulina* was proceeding to her place of destination, when passing through the Straits of Gibraltar, she was taken by a Spanish privateer, and carried into Algeziras, where she

was condemned by virtue of the Berlin Decree, which had just then been promulgated in Spain.

The house of Maury, Freres, and Co. having heard of this capture and condemnation, commissioned their correspondent at Algeiras to re-purchase the *Paulina*, which was done for 6500 Spanish piastres. The ship then proceeded to Malaga, where she took in her cargo, and departed for England or Riga.

On the 7th of January, 1808, the *Requin* privateer, of Morlaix, took the *Paulina* and carried her into Morlaix.

In the course of the trial it appeared that the reason why the *Paulina* was taken and carried into Morlaix, was, that she had spoken an English brig of war, called the *Redwing*, on the 17th of December, 1807, (the same day that the Milan Decree was dated;) and on the 25th of the same month had been hailed by several English ships of war off Lisbon, especially by the *Tonnant*.

In the course of the proceedings it was stated by the captors, that the ship had been in Guernsey, and what had happened at Algeiras, &c. &c. The captors therefore demanded the confiscation of ship and cargo, as having acted in contravention to the Berlin and Milan Decree.

The counsel for the claimants, M. *Loiseau*, on the other hand, contended that what had happened to the *Paulina* at Algeiras was in favour of his clients, as they had already paid for the Berlin Decree, although the ship sailed from Guernsey before that Decree passed. The *Paulina* having since become the property of the house at Malaga, ought not at this moment to be liable to condemnation for acting in contravention to the Berlin Decree; and as to the *Milan* Decree, it ought not to apply to his clients, as the visits or the hailing by the English ships was made before that Decree could be known to the captors or captured, and that the ship and cargo being neutral property should be restored to the parties. At all events, whatever guilt was attached to the ship, the cargo ought to be distinct, as it was put on board after the *Paulina* was re-purchased at Algeiras, &c. Nevertheless, ship and cargo

were condemned by the Council of Prizes in Paris, the 23d of July, 1808.

(Signed)

Mr. CHOMPRE, *Juge Rapporteur* ;

Mr. LOISEAU, Advocate for the Paulina; and

Mr. LE PROCUREUR GENERAL, for the Captors.

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No. 3.

*Case of the American Ship Hopewell, Captain Jeremiah Shephard.*

THE facts relating to this case are not given in a distinct and *separate* detail in the *Memoire* ; but they are sufficiently explained in the course of the argument of the advocate, and not at all contradicted on the part of the captors. I give a translation of that argument, because it contains every thing that can tend to shew the iniquity of the decision in this, as well as in all the others which are mentioned in this Appendix.

“ The captors,” says the advocate, “ think they have discovered four grounds for the confiscation of the Hopewell and her cargo.

“ We shall see, on a discussion of these grounds, that not one of them can justify a measure so severe.

“ The first ground is that the *Hopewell* had just come out of an English port when she was taken, and consequently that there is a contravention of the Decrees of the 21st November, 1806, and 17th December, 1807.



“ It is nugatory to speak here of the first of these Decrees. It is sufficient to read it, and compare it with those which have followed it, to be convinced that it did not in any manner interdict *direct* commerce between England and a neutral country; that the prohibition was confined to the *exclusion* from *French* ports, vessels which should have been in *those* of the *enemy*.

“ This truth has been demonstrated so many times; it is so evident to the COUNCIL, that it appears perfectly useless to employ longer time upon it.

“ We must therefore absolutely exclude from the discussion, not only the Decree of the 21st November, 1806, but even that of the 23d November, 1807, because it is certain that the ABSOLUTE PROHIBITION was established only by *that of the 17th December of this last year*.

“ But can this Decree of the 17th December be applied to the HOPEWELL?—We maintain the negative, and that upon two grounds:—

“ It is ascertained, in the first place, that the *Hopewell*, dispatched from Salem for Bourdeaux, the 3d December, 1807, was met on the 24th of the same month by the armed *English* vessel the SPEEDWELL, which forced her to *change* her course, and steer towards *England*; that yielding to superior force, the *Hopewell* sailed for Cowes; and that the bad weather having prevented her from getting in there, she arrived at Dartmouth, from whence she went to London, after a long and indispensable repair.

“ These facts, proved by the ship’s papers, and by the proceedings in the cause, are further confirmed by three other papers which we produce to-day.

“ The first is the *French* certificate of *origin*, which Captain Shephard had obtained for his voyage to Bourdeaux: the second is the certificate of health, delivered at Salem for the same voyage; and the third the protest made at Dartmouth, by the Captain and his officers, the 15th of February, 1808.

“ This being the case, the first ground of inapplicability will result from this, that the Captain having sailed from Salem the

3d December 1807, could not know of the Decree promulgated at Milan fourteen days after; and that he could have no knowledge of it on the 24th December, when he was met by the *Speedwell*. Whence this consequence is inevitable, that he could not know that in yielding to a superior force, he incurred the confiscation attached to such a passive act. Whence also the consequence, that the Decree in question cannot be applied to the present case, without giving it a *retrospective effect*; an excess of power which all laws *natural* and *positive* have denied to the French tribunals.

“The second ground of inapplicability results from this, that the *forced* entry into an *English* port, being once legitimated by the ignorance of the law, the *Hopewell* must be acknowledged to have had the right to quit that port

“It is a principle universally recognized, that no interruption of commerce can have a retro-active effect; and that when a port or a country are declared in a state of blockade, *all vessels found there before that declaration ought to have the liberty of returning home.*

“This principle, guarantied by the law of nations, has been formally consecrated by the 12th Article of the Convention with America, in the year 9, which is expressed thus:—‘No ship of the one or of the other nation, which shall have *entered* into a port or place, *before they have been REALLY blockaded, besieged, or invested by the other,* SHALL BE HINDERED *from coming out with her cargo*; if she be found there when such place shall be surrendered, the ship and her cargo shall not be liable to confiscation, but shall be sent back to the owners.’

“To resume the argument, we say that the *Hopewell*, from the single circumstance that she could not *know* of the Decree of the 17th December, could not contravene it, by yielding to the violence which this Decree had in view to punish; and further we say, that once legitimately entered into an enemy’s port, this vessel had the right at any period, to come out of that port.

“The having been in an enemy’s port, therefore, proves nothing here in favour of the capture; the Decree is evidently

inapplicable, and this first ground of confiscation is inadmissible.

“ The second ground is, that the cargo was put on board at London; whence, according to the captors, the necessary consequence is that this cargo was for *English account*.

“ Whether the cargo was put on board at London, we have neither a right, nor do we feel an interest to dispute: but admitting this fact, the consequence by no means follows, that the cargo was for *English account*.

“ It has been attempted to make out this allegation, from what the crew of the *Hopewell* may have been brought to declare; but to be convinced of the futility of this attempt, to recollect that the cargo was on freight, and sent on board by a variety of freighters, so that we have reckoned not fewer than fifty-five particular invoices.

“ This being understood, the crew of the *Hopewell* could know nothing of the *account* for which the shipment was made, in which the Captain could have no interest, because, whatever it might be, the goods always answered to him for his freight. And accordingly we find the Captain uniformly declaring that he is totally ignorant, *who are the real owners of the cargo*.

“ His Mate declares, it is true, that the *cargo belonged* to different merchants, whose names he does not know, *but that they were in London at the time of the loading*.

“ Supposing this officer not to have confounded the *loader* with the *owner*, it is evident that his declaration proves the cargo to be for *American account*; for if the owners had been Englishmen *established in London*, he could not have simply said, that they *happened* to be in London at the time of the loading. These expressions can only be applied to *American* merchants, come for a time to London for the purpose of *making their purchases*, and dispatching them for their houses in the United States.

“ To this let it be added, that twelve invoices formally announce that they are for *American account*; let it be added that it is an invariable principle, that the cargo is presumed,

of right, to belong to the consignee; and no longer doubt can be entertained of the *neutrality* of that of the *Hopewell*.

“It is useless after this to observe on the one part, that according to the 14th Article of the Convention of the year 9, the enemy’s goods are protected by the flag; and on the other, considering the interest of the Captain in his freight, that the objection attaching to the goods cannot affect the rights of the ship.

“We come to the third pretext for confiscation—it is that there was no muster roll (*Rôle d’Equipage*) on board the *Hopewell*. This is, in the first place, *not true*; and in the next, if it were, it is not a ground of confiscation.

“With respect to this last point, we have only to confine ourselves to this irresistible observation:—*this document has ceased to be requisite* since the Convention of the year 9, and in the terms of the 4th Article, which has, in this point, derogated from all contrary regulation, American ships are not bound to have any other proof of their regularity, than the passport, of which the form is inserted in that article.

“Two motives may have caused the adoption of this disposition:—

“First, There being no distinction of ranks in the United States, there could be no *Rôle d’Equipage* in the sense which we attach to this expression; and,

“Secondly, The Convention is founded in sound policy, which says that, far from excluding English sailors from American navigation, we ought to facilitate the means of their being employed in it; for every time that an *English* sailor is employed on board an *American* ship, we have a *friend* the more, and an *enemy* the less.

“But it is not true that this document was not found on board the *HOPEWELL*. *There is such a document among the ship’s papers*; and we cannot conceive why the captors could not find it. Let them give themselves the trouble of examining again, and they will find the *Rôle d’Equipage* made at Salem the first December, 1807, consisting of eight men, of whom seven are Americans, and one a Dane.

" They will further find a certificate delivered by the American Consul at London, the 14th November, 1808, attesting that *three* of these men had deserted. It was necessary to supply their place; and assuredly this could only be by Americans; for we must be totally ignorant of what is called *pressing* in England, to suppose that a Government which confines on board its ships men even who are *not* mariners should permit its *mariners* to take a service on board of *foreign* ships.

" Accordingly we find Captain Shephard giving, in his declaration, all the details on the age and places of nativity of the men who compose his crew, and who are all, to the number of nine, natives of the United States.

" This third ground of confiscation is therefore refuted both by the fact, and by the right. We may now proceed to answer what follows:—

" Fourthly, The captors have taken upon themselves to say that the *Hopewell* was destined for CADIZ; that she was there to land some gun-powder and saltpetre which she had on board; and hence an irresistible ground of confiscation.

" This is founded on a receipt for duties given at London, at the bottom of which they say, is the announcement of a double destination for Cadiz and New York.

" We answer by the *most positive denial*, and maintain that the *Hopewell* had not, and could not have any other destination than that to New York.

" Besides that the receipt for the duties says nothing of what it is made to say, it is absurd to look in such a document for the destination of a vessel to which it has been given. The person who receives the duties has neither interest in knowing where the vessel is going, nor the means of ascertaining it. His single office is to fix the quantity of the duties, to take care that he receives good money, and to give a good receipt.

" It is, therefore, in the other documents, and particularly in the *clearance*, that we must exclusively look for the real destination of the ship.

" Now, this document, dated the 14th November, 1808, the

same day as the receipt for the duties, says positively that the *Hopewell* is destined for Calais, and makes no mention of the port of Cadiz.

“ Let us add the proofs referred to in the proceedings, and the demonstration will be complete. Captain Shephard, and the nine men of his crew have been interrogated. All unanimously declare that the *Hopewell* was destined for New York.

“ But there is still something better than these *official* declarations—witnesses who cannot be suspected, as they have no kind of interest in the event ; the *passengers* in the *Hopewell* have attested the same truth.

“ These passengers, to the number of six, have also unanimously declared that the *Hopewell* was going to New York : several of them had even declared that it was *certain* she was going to New York, and that they never heard the smallest hint that she was to *touch* at any *other* port.

“ And how can it, in fact, be supposed, that American passengers would have been prevailed upon to lengthen a winter passage, and brave, without any motive, the dangers they might have to run, whether for *arriving* at Cadiz, or to sojourn in that city, the unfortunate theatre of external war, and of civil dissensions ?

“ We may, therefore, confidently say that a *direct* destination to New York is *positively* demonstrated, and that the allegations in the *negative*, which have been hazarded, are not justified by any species of proof.

“ But here we may expose the absurdity in addition to the rashness of the assertions. Why should it be presumed that the *Hopewell* would have undertaken the dangerous entrance into Cadiz, to carry thither a few pounds of *powder to shoot game*, and a few pounds of saltpetre ?

“ First let it be observed that we find no saltpetre, either in the manifest or in the invoices ; and that on the whole, this coalition with the enemies of France is reduced to *325 quarters* of a pound of gunpowder, which, from the very circumstance of its being put in quarters of a pound, must be nothing but superfine powder, fit only for shooting game. These, to be

sure, are powerful succours for a place of war, in a state of siege! As if the English government had any occasion to load on board a neutral, the perfidious succours they wished to give to the victims of their seduction\*; as if they had not their own transports; as if, in short, some cwts. of powder for shooting game, were succours to furnish to a city menaced by the most formidable armies in the universe!

“All this is wretched; and we think too well of the good sense of our adversaries, to hesitate to tell them that they are already convinced, that the articles in question could have no other destination than the United States; a country where fine powder fetches a good price, because it is not yet manufactured there; and where saltpetre is still of more value, because the country does not produce it, though gunpowder has been manufactured there for some years, while on the contrary everybody knows that Spain produces this article in abundance.

“Thus then fail the four grounds of confiscation weakly proposed by the captors.

“We cannot see a fifth in what they say with respect to the *rencontre* of the 24th December, 1807, and of the convention, resulting from it, of the Decrees of his Imperial Majesty.

“This pretended ground is confounded with the first; and from the moment it has been proved that the Decree of the 17th of December, the *only* law on the subject, is inapplicable to the case of having been in an enemy's port, it must also necessarily be inapplicable with respect to the *visit* of which the consequence was that the *Hopewell* was conducted to England.

“Here we might conclude our argument; but it will not be foreign to mention a trifling incident, which will shew something of the spirit in which those interested in the *Rodeur* (the privateer) wish to exercise the rights which they think belong to them.

“There were found, on board the *Hopewell*, some cloaths and

\* The reader will recollect that I give here only the observations of the French advocate. I do not adopt his expressions.

other things for the personal use of Mr. *John H. Purviance*, an accredited agent of the United States at London.

“ Informed of this circumstance, the American Consul of the *arrondissement* to which the prize was conducted, reclaimed these effects of Mr. Purviance, in virtue of his office.

His reclamation was founded on the *law of nations*, the constant usage of *civilized nations*, which respects the personal effects of accredited agents, *even* when the question concerns agents of *enemies*, and effects taken on board *enemy's ships*.

“ What can it be supposed the captors answered to this demand, so trifling in its object, and so strongly recommended by the dignity of the French name ?

“ It must be copied to be believed :—“ John Purviance,” they say, “ claims by a special memorial, a *trunk*, a *box*, and a *writing desk*, put on board the *Hopewell*,—the remonstrants are obliged, on this point, to insist on the *execution* of the *regulations*: the effects were found on board a ship denationalised; they ought to be subject to the forfeiture to which they have been exposed.”

“ AB UNO DISCE OMNES, says the French advocate; captors who forget themselves so far as to covet the very cloaths of an agent accredited and avowed by his Government, must have engendered many chimeras and accumulated many sophisms, to plunder those who are protected by a law common to all, and by the justice of their cause.”

All this reasoning was in vain. The ship and cargo were condemned on the ground of the meeting of the 24th of December, being a contravention of the Decree of the 17th, which issued at Milan only three days before, and Mr. Purviance never recovered an atom of his private property !!



## No. 4.

*Case of the American Ship the Catherine,  
Thomas Beckford, Master.*

THE Catherine sailed from Boston in America, the 23d of November 1807, bound to Leghorn. Her cargo, which consisted of sugar, coffee, salt fish, logwood, &c. estimated at 48,332 dollars. The ships papers produced were all regular, viz. Her register proving her to have been built in America, and belonged to William Gray, junior, merchant at Salem. A permission from the President of the United States to proceed to Leghorn. The cargo belonging to the owner of the said ship was consigned to Messrs. Grant, Webb, and Co. merchants of Leghorn, as appeared by the invoice, bill of lading, and a *certificat d'origine*, by the French Consul at Boston, attesting the origin of the cargo, &c. &c.

When off Cape St. Vincent, she was hailed by a Spanish gun brig, who suffered her to proceed on her voyage.

On the 28th of December 1807, she was boarded by the English brig of war, the Grasshopper, Lieutenant Joseph Wilkes, who wrote the following on the ship's register: "Not to proceed to any port of those countries at war with Great-Britain, or which are under the influence of France." This mandate was duly entered on the log book of the Catherine.

On the 2d of January, she was captured by the privateer *La Josephine* and conducted to the port of Palma in Majorca. This capture is not to be wondered at, as the owner of the privateer, long before the decree of the 17th of December (the Milan decree) sent his instructions to his captain ordering him "to stop all American vessels and to bring them up in the nearest port." Thus, without any reason assigned, notwithstanding the protest of the captain, the cargo was sold in

direct violation of the 20th article of the treaty of the year 9, and of the formal orders of the decree of the 2 Prairial, an 11 \*.

But it did not stop here ; the captors even refused to allow the crew of the ship the common necessaries of life. Convinced of the inutility of their application to the French agents in that Port, the parties concerned have thought proper to appeal to the Council of Prizes. These are the facts:— We will now see what the captors have alleged in support of their conduct. They pretend that the Catherine had

1. Refused to bring to.
2. That the Catherine was *denationalisèe* by the visit of the English ship of war.
3. That she was bound to another port than that of Leghorn.
4. That the cargo was for English account, and consisted of British produce.

To support these charges, the Captors allege ;

1st. That when they first gave chase to the Catherine, she hoisted more sail, as if she had been an enemy. That when the privateer fired a shot at her, she hoisted American colours, and instead of lying to, continued her course, and it was only after a chase of five hours that the privateer could come up with her.

In answer to which, the claimants say, and which the captors admit, that it blew hard with a rough sea, and that the privateer did not hoist French colours till after she fired a shot. Besides, there is a positive law passed the 2d Prairial, year 11, which says, “ That all vessels refusing to shorten sail or bring to, may be compelled to do so, and in case of *resistance* and an *engagement*, adjudged a legal prize.”

With respect to the second allegation, namely, that the American was *denationalized* in consequence of the visit by the English man of war :

The counsel for the claimant says, That the Milan decree of the 17th of December could not be applicable to his clients, as the Catherine had sailed from Boston 24 days before the passing

\* The above is a literal translation of the printed *Memoire* presented to the Council of Prizes by the advocate for the claimants.

of that decree, consequently, not knowing the existence of such a law, they could not or ought not to suffer by it. "*Non obligat lex, nisi promulgata.*"

The 15th article of the American convention with France concluded in the year 9 says, "That any shipment which may be made by subjects of neutral states, on board of an enemy's ship is considered as neutral for the space of two months from the date of the declaration of war against that country where the ship belongs to, which has such a neutral cargo on board." Therefore the Milan decree could not be applied in this case. In regard to the third charge, namely, that the Catherine had another destination than that of Leghorn; the captors pretend that she was going either to Malta or Sicily, and to support this accusation they say "that she was going east of Sardinia, which is not the way which vessels take that are going to Leghorn, in the winter season." The counsel for the claimants refute this charge, as the captain, by the instructions of his owners, might either go to Naples or to Leghorn. At the former place it was proved that the American owner had carried on a considerable trade, but there was a letter on board from the owner to Messrs. Grant, Webb, and Company, at Leghorn, consigning ship and cargo to them.

In support of the 4th charge, that the cargo was for English account, and that it consisted in British produce, the captors alleged that if the captain of the Catherine had not told the captain of the British ship of war, that his cargo was English property, he would have sent him into Gibraltar to pay the tribute, and that on account of that declaration he would not go to Leghorn for fear of being confiscated as English property.

In reply to this the counsel for the claimants said that by what the English officer had written on the ship's register, it proved that he thought that the British order in Council was not applicable to the Catherine, on account of the time of her departure from Boston. And that if the cargo had been for English account, the English officer would certainly have given us every facility of going to Leghorn, as the English desire nothing better than to send their cargoes to countries from which they are

excluded. The captors further pretend that William Gray only lent his name to the English merchants (*n'est que le prête-nom des Anglais*).

In reply to which, the counsel contended that Mr. Gray is considered as one of the wealthiest citizens of the United States, and that owing to his industry, he made the port of *Salem* one of the most considerable places of trade in America! There was a time when to be rich and to be criminal were synonymous; but those times are past\*. The counsel prays for the amount of the cargo, ship, &c. &c.

*Ship and cargo condemned.*

MR. DE LA GRANGE, counsel for the claimants.

MR. LE PROCUREUR IMPERIAL for the crown.

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### No. 5.

#### *Case of the American Ship the Sally, Jacob Hastings, Master.*

THE *Sally* sailed from Boston in America, the 27th of December, 1807, bound to Cagliari, or any port of France and Spain in the Mediterranean, in Sardinia, laden with cotton, sugar, hides, &c. &c.

It was proved by the ship's register, that she was the property

\* I must beg leave to differ from my worthy and learned friend Mr. De la Grange. In a future publication I will prove that the *regime* of Robespierre and Bonaparte is in many instances the same, especially in ruining and destroying rich men.

of Jesse Summars and Thomas Coffin, citizens of the United States. A clearance of the Custom House at Boston clearly proved the shipments made at that place by Benjamin Wheeler, part of it by William Oliver, by William Thompson, and part of it by Samuel S. Newman, by Lorrington and Curtis, and by Wood and Slade, and further confirmed by the several invoices, bill of lading, &c. &c. The whole valued at nearly 24,000 piasters.

On the 19th of December, the *Sally* arrived off Malaga, without even ever having been spoken at sea by any English cruisers. She hoisted her colours for a pilot, and was standing in for the port, which was about nine miles distance. She was proceeding towards the port with her colours still up for a pilot, when at about four miles from the said port, a row boat, with French colours hoisted, came towards her, which proved to be the French Row-boat privateer, *L'Aigle*: she was immediately taken possession of and carried by force into Malaga. As it is necessary for these depredators to set all their ingenuity at work to find out pretences for capturing ships and cargoes belonging to the subjects of our allies, let us see what their allegations are.

1. The *Sally* is accused of being bound to Sardinia, and that the captain concealed his place of destination.
2. Because some of the cargo was missing.
3. Because the fresh water which was in the casks, did not appear to have been long there, and that there appeared to be small shells at the bottom of the ship, and at her sides, as if she had recently been at anchor in a port (to make it appear as if the *Sally* had been at Gibraltar to pay her tribute).

To the first of these charges we must admit that the captain did not say at first that he intended going to Cagliari, and for this reason, the destination to Cagliari was only simulated, to get rid of the English cruisers, but her *real* destination was the first port of France or Spain in the Mediterranean. From the very direction in which she was captured it was evident that she could have had no pretension of going any where else than to Malaga, and the reason why she was subject to capture in being bound to Cagliari, the privateer's owner pro-

duced the circular letter of the Minister of Marine, dated 18th of January, 1808, "to embargo all Sardinia ships in the ports of France and Italy, and to capture all ships bound to Sardinia, or coming from that island!!" and as an additional reason for the capture of the *Sally*, he produced a circular letter from Mr. Colin, Comptroller of the Customs at Paris, saying "Que le séquestre des Navires neutres doit être maintenu d'après les ordres de S. M. portant formellement que l'on doit retenir sous le séquestre tous Navires neutres qui ont été visités par l'ennemi SOIT ANTERIEUREMENT, SOIT POSTERIEUREMENT au décret du 17 Decembre (de Milan), et par conséquent renvoyés au Conseil des Prises."\*

Mr. De la Grange then argues upon the existing treaty of the year 9 between France and America, allowing two months time for all the property of the Americans to arrive even in enemy's ships before they are subject to be captured.

As to the second charge of her cargo being deficient; the privateer's captain alleged that there were 650 pounds weight of salt fish less on board than what there is designated in the bill of lading and invoice, and that the said fish had been paid to the captain of the man of war as a tribute conformable to the British orders in Council of the 11th of November. (To this charge the counsel for the claimants very justly observes, that they cannot account for a deficiency of 650 pounds of salt fish; but surely no English captain of an English man of war will take salt fish in payment!!!)

As to the charge of her having been at Gibraltar, Mr. De la Grange produced the two following documents.

"American Consulate at Gibraltar,"

"These are to certify, that on examining my registers for the entering of all American vessels at Gibraltar, no vessel called

\* This letter certainly justifies the capture on the part of the privateer, had the *Sally* been visited by the English. But this case, like all the others, are the acts of the so called government of France. The privateers are nothing more than the agents of that ANOINTED BRIGAND. He is to blame and not the privateers. "Qui facit per alium, facit per se." But as to the letter itself, is it not evident that Bonaparte's intention was to capture every ship belonging to America that his cruisers could pick up?—L. G.

" the *Sally*, captain Jacob Hastings, has been in this port from  
 " the month of December till March last.

(Signed) " JOHN GAVINO,  
 " Consul for the United States at Gibraltar."

" Office of Customs at Gibraltar, 7th of May, 1808.

" This is to certify that the American ship the *Sally* of Boston,  
 " Captain Jacob Hastings, has not been in this port from the  
 " month of December to March last.

(Signed) " WILLIAM SWEETLAND,  
 " Captain of the Harbour at Gibraltar."

As to the charge of the waters *being too fresh*, Mr. De la  
 Grange thought it too ridiculous to reply to: however

*The ship and cargo were condemned.*

Mr. LA LOI, Juge Rapporteur.

Mr. LE PROCUREUR GENERAL IMPERIAL for the Crown.

Mr. DE LA GRANGE, for the Claimants.

No. 6.

*Case of the Grace, Captain Ralph Linzee.*

THE American ship the *Grace* sailed on the 19th of November,  
 1807, with a rich cargo from Boston to Leghorn; she was just  
 going to enter into her port of destination the 27th of January,  
 when she was met by the privateer the *Cosmopolite*, boarded by

her, and carried into Porto Ferrajo. The violence exercised as well by the French agents at that place, as by the privateer's crew on the person of Captain Linzee and his officers, are without example.

To support this capture the captors pretend

1. That the cargo is for English account.
2. That the Grace was visited by an English privateer the 29th of December, 1807.
3. That having on the 21st of January spoken with a vessel coming from Marseilles, by which she was informed of the Milan decree, Captain Linzee had in consequence thrown over-board several documents.

In answer to the first charge, the counsel for the claimants argues, that according to the 14th article of the treaty between France and America, concluded the 8th Vendemiaire, year 9, the American flag may neutralize property, excepting such articles which are considered contraband in time of war. This charge therefore needs no refutation, as existing treaties justify it; but we will not avail ourselves of it, and *we can prove* that the cargo is *bona fide* American property.

On examining the ship's manifest, that the shipments on board the Grace were made by William Gray, Butler, Fogesty, and Thomas Amony and Co. and consigned to different houses at Leghorn, and the ship was consigned to Grant, Webb, and company of that city, but the captors say that Captain Linzee had at first declared, that the whole of the cargo was his own property: And in the same *proces-verbal*, they say that they captured the Grace, "because there was not any person on board of their privateer who understood English, and who could read letters which were on board, which *were all sealed*, and "which the captain of the privateer thought fit to break open." How could they then understand what Captain Linzee said about the cargo being his own?

The captors have another reason for supposing the cargo to be English property; namely, that having been visited by the English, the 29th of December, they permitted the Grace to prosecute her voyage for Leghorn, without enforcing the



duty required by the British orders in Council. These indulgencies, the captors say, are a sufficient proof that the cargo is English property.

Admirable reasoning, no doubt! observes Mr. De la Grange, advocate for the claimants; however we will prove that we never were visited by the English.

The captors pretend that eight men out of twelve of the ship's crew stated that the *Grace* was visited by the English off Malaga on the 29th of December 1807.

The counsel for the claimants contend that three officers belonging to the *Grace* have positively sworn to the contrary, and that some of the crew had retracted what they had said, and who were mostly renegadoes and deserters. It is nevertheless true that she was visited by a ship of war under English colours, but that vessel was Spanish. In the course of the *memoir*, the advocate exclaims, "What is become of French hospitality, and French urbanity, when I must state that captain Linzee was seized, dragged from his ship, and confined, in spite of existing treaties between the two Nations! And supposing that the *Grace* had been visited by the English, is it that because the English ship of war respected our neutrality and suffered us to prosecute our voyage, that we are to be condemned by those to whom we are allied by solemn treaties?"

As to the charge made against captain Linzee for throwing papers overboard, the counsel for the claimants observes, that four months after the capture of the *Grace*, an English sailor, one of her crew, had made a declaration to that effect, and also stated that captain Linzee had a brother in the British navy.

*Ship and cargo condemned.*

Mr. DE LA GRANGE, Advocate.

Mr. NIOU, Juge Rapporteur.

N. B. Captain Linzee was not allowed to come to Paris till the trial was over, nor was he permitted to write letters to his friends either at Leghorn or at Paris, which appeared in his protest.

## No. 7.

*Case of the Mercury, an American Ship,  
Captain Bradford.*

THE *Mercury* and her cargo were the property of Robert Roberts, a native citizen of the United States, merchant at Plymouth in the State of Massachusetts.

She set sail from Boston for Alicante, on the 29th of *October*, 1807, with a cargo consisting of dried cod, salmon, salt beef, cheese and sugar.

It is material to attend to the *date*: the decree of Milan did not pass before the 17th of November.

She had all the regular documents; and indeed there was no doubt suggested before the Council of Prizes that her voyage was not perfectly fair. It appeared, without an attempt at contradiction, on the part of the captors, that the cargo was the produce of Holland, of the Havannah, and of the United States.

She had a long and dangerous voyage. On the 29th of December, about two leagues from the Straits, she was saluted and conducted into Gibraltar by two armed boats, belonging to an English ship, called the *Illustrious*, riding at anchor in that port.

Though destined for a port, said to be *blockaded* by the English, yet the detention of the *Mercury* at Gibraltar was of short duration. The perfect regularity of the voyage, and still more the "*impossibility that captain Bradford should have known the order of Council of the 11th of November, convinced the ENGLISH captor that he had no right over this vessel.*" These are the words of the *French Advocate* for this ship, contrasting the conduct of the *English* cruisers with those of the *French* captors in the sequel.

The ship had sailed from Boston on the 29th of October: the British orders in Council did not issue till the 11th of

November following. She could therefore not know them, and she was respected. The decree of Milan did not pass till the 17th of the same month ; and yet this latter was applied to her.

The *Mercury* anchored at Gibraltar on the 31st of December ; she remained on Quarantine till the 5th of January, and the next morning was completely liberated, " and this too," says the French Advocate, " without having been subjected to the *shameful* tribute, which the order in Council had " wished to establish."

He calls it a "*shameful* tribute," not because he thought it so, but because, intending to contrast the conduct of the *English* cruisers with that of the *French* captors, he thought it necessary for his own safety, to throw in some *qualifying* expressions.

The vessel immediately set to sea : on the 17th of January, she was met across the Gut of Gibraltar by an *English* frigate, of which an officer went on board and examined the papers. She was met again on the 31st by a privateer under English colours. She was not molested ; at last the *Mercury* discovered the port of *Alicante*, the very port of her destination, at the distance of about only two leagues, when she was taken and conducted to *Alicante*, the very port to which she was originally destined, by the *French* privateer *La Josephine*.

On the very day when the vessel arrived at *Alicante*, while the captain was detained in quarantine, and could communicate with nobody, it was thought fit to sell 3,280 hundred weight of salt fish, the most valuable part of the cargo.

Mr. Roselt, the consignee, went immediately to the consul *ad interim* of France, to make an opposition to the sale, and at all events to request that he might be present, that it might be made in lots, and with the usual publicity.

The French Consul promised an answer ; and the next day an answer was given in the *negative* on *all* the points.

Then came a protest from the consignee ; but this was of no avail. The 3,280 hundred weight of dried fish were sold wholesale, in one lot, without any public notice, the second day after the prize had entered *Alicante* ; and to aggravate

the injustice, this sale was made to the nephew of the person who had fitted out the privateer.

This case came before the Council of Prizes at Paris; but it was in vain that the advocate for the claimants urged the circumstances of the captain being unacquainted with the decrees, and the impossibility of his knowing them at the time of departure from his port of loading; it was in vain that he urged the general principles of law, that no ordinance ought to have a *retroactive* effect; it was in vain that he urged, that there was no retroactive clause in the decrees themselves: it was equally in vain that he urged, that in the very first title of the Napoléon Code, a *retroactive* law is formally and in express terms *proscribed*.—The ship and cargo were condemned.

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### No. 8.

#### *Case of the American Ship Peace and Plenty, Captain Foster.*

THIS is a singular case. The vessel, loaded with sugar, pepper, cotton, indigo, and salt fish, set sail on the 3d of December, 1807, from Beverley, in the state of Massachusetts, destined for *Marseilles*.

The reader must still keep in mind, that the decree of Milan was dated the 17th of that month, and that it ought to have had no effect on a vessel which sailed *before* its date, nor even before it could possibly be known to exist. He will recollect, that by the principles of *universal* law, recognized by *most* particular laws, a fact in itself not *morally* wrong, ought not to be punished

in consequence of a *subsequent* decree from whatever authority emanating. He will recollect, that a law not *promulgated* in due time to permit it to be *known* to the persons who might *ignorantly* do that, which, if it had been known, would be a contravention of it, ought not to have a retrospective effect, to punish actions, which, *before* the knowledge of the law, ought to be considered as innocent. The gentleman, Mr. De la Grange, whose name I have had frequent occasion to mention, has in his memoirs, with respect to the capture of American vessels, urged these topics with great strength of reasoning, though with a prudence which I cannot but admire. But all his reasoning has been in vain: *all* the vessels have been condemned on the principle that they were taken *after* the issuing of the Milan decree, though they were at sea, not only before it could be known, but *before* it actually existed; the *Council* of Prizes have uniformly followed the maxim of Mr. Colin, Comptroller of the Customs, to condemn all vessels "tant anterieurement que posterieurement."

It would be tiresome to the reader, and indeed unnecessary for my purpose, to state the documents found on board the respective ships captured, recognized to be perfectly regular by the French tribunals, and without fraud as to *France*, however they may have been fraudulently contrived to elude the *English* cruisers.

Suffice it to say, in the present case, that every document that could be imagined to legalise the voyage of this vessel to *MARSEILLES* was found on board; that no objection was made to her on *this* account; but it was urged that she had been *visited* by an *English* ship.

The decree of Milan, let it be again recollected, was *signed*, and *only signed*, on the 17th of December, 1807. This ship had sailed from Beverley on the 3d.—She was on her voyage, when, on the 20th of December, only three days after the *date* of the decree, passing the Azores, she was met by an *English* privateer, *THE LION*. The captain went on board, examined the papers, and wrote on the certificate of the voyage the following words:—

“ 20th Dec. These presents are to attest that the *Peace and Plenty*, of Beverley, Captain *Joshua Foster*, has been boarded this day by me, *Joseph P. Shorbon*, commander of the privateer the *Lion*; and that I have given information of the restrictions imposed by the blockade, that is to say, France, her allies, and the ports that belong to her, and from which the English flag is excluded—Wherefore you must go to *some* English port.”

The captain was wrong in this, because the orders in council do *not* require that the vessel thus visited should go into some *English* port, but that she shall *not* go into any *French* port, or any port from which English ships are excluded. This is, however, of no importance in the present case.

Captain *Foster*, notwithstanding this prohibition and injunction, pursued his course to *Marseilles*.

When he was in the latitude of Ivica, an island belonging to Spain, in the neighbourhood of Majorca and Minorca, he was met by a *French* privateer, who detained him, and sent sailors on board to secure her. But the captain of the privateer, learning that Messrs. *Louis Liquier* and *Co.* were concerned in the adventure, which house he said he knew, permitted the *Peace and Plenty* to continue her voyage.

He continued it, without any other remarkable occurrence, till the 22d of January; when, having already a pilot on board, and being at no greater distance than half a league from *Marseilles*, he was taken by a boat from a chebeck in the service of the customs, and conducted into that port, which was the port of his real destination.

It was in vain that the advocate urged that the vessel was visited on the 20th of December, only three days after the issuing of the Milan decree, and of course, that the captain could not know of its existence.—The vessel and her cargo were condemned.

## No. 9.

*Case of the Calliope, an American Ship,  
Captain William Taylor.*

THIS ship and her cargo were consigned to Messrs. Lourde and Co. and to Louis Ferrier and Co. merchants, at Bourdeaux.

She sailed from New York for Bourdeaux, on the 29th of November, 1807, with a cargo consisting of sugar, cotton, salt fish, fish oil, Campechy wood, staves, coffee, and furs.

Let the date of her sailing be remarked.

The ship and her cargo were *ostensible* property of five native Frenchmen settled at New York.

It appeared clearly, however, that the whole of the cargo was for *French* account.

The papers on board the *Calliope* were acknowledged to be all regular, and conformable to the treaty between France and America, and the regulations prescribed for ascertaining whether she was really American.

Beside this, Captain Taylor had a certificate delivered the 27th of November, 1807, by the French Consul at New York, by which it was certified that the whole cargo was of the produce native or industrial of Guadaloupe, the Havannah, and the United States.

The crew consisted of thirteen men, of whom ten were Americans, one an Indian of Macao, another a Swede, and the other an *Englishman*.

The vessel contained dispatches from the *American Government*, and from the Imperial Minister accredited there; and still further, had on board a particular agent from the colonial

prefect of Guadeloupe, bearing dispatches for the French Government.

She had a quick, though difficult passage. On the 28th of December, she found herself within about thirty leagues from the isle of Oleron, when she discovered a sail towards the east-south-east, and five others to the east-north-east.

The first overtook her at half past eight o'clock in the morning, and was recognized by Captain Taylor as an *English* frigate.

The *Calliope*, without means of resistance, soon found herself under the guns of this frigate: she was ordered to heave to: she was obliged to obey.

An instant after a boat from the frigate reached the *Calliope*, and a lieutenant jumped on board. He said the frigate was the *Emerald*, Captain Maitland. He examined the papers; but Taylor had the good fortune to conceal the important packets of which he was the bearer, and the circumstance of his having a French agent on board.

Every thing appeared regular to the English lieutenant, and he quitted the *Calliope*, after having written on the back of the log-book words to the following effect:—

“ All the French ports, as well as those under the influence of France, being in a strict state of blockade, you are *warned*, for the present, not to enter the said ports; and if, after this warning, you be found attempting to enter there, you will be *liable* to be seized and conducted into England, to be there declared good prize.—Given under my seal, &c.”

Taylor was necessarily obliged to veer about and steer another course. He eluded the *English* cruiser, and contrived to get into the road of *Port Louis*, in the neighbourhood of L'Orient.

After his quarantine, he was, on the 3d of January, 1808, boarded by the officers of the administration of the marine and of the customs, and made acquainted with the imperial decree of the 17th of December, by virtue of the first article of which they seized his vessel and cargo, and set a guard on board.



The next day, the captain made the usual report, and a double protest, before his Consul, and before the President of the Tribunal of Commerce.

The vessel was, in the course of the two succeeding days, piloted into the port of L'Orient.

On the 6th, the captain, his crew, and his passengers, underwent interrogatories. Every thing contributed to confirm the facts above-mentioned; and one of the French passengers declared himself the owner of a considerable part of the cargo.

On the 20th of January, the captain was summoned to the Custom-House, when it was notified to him that his ship and cargo were seized, and that a suit for confiscation was to be instituted before the Council of Prizes at Paris, conformably to the imperial decrees of the 23d of November, and the 17th of December, 1807.

Neither of these decrees could apply to him; they did not exist at the time when he set sail from the port from which he was loaded; he could not be presumed to have had any knowledge of them in the course of his voyage; he knew nothing of them, in fact, till the seizure was made; and, what is still more important, his cargo was for *French* account—it was *French* property.—He had, at great risk, eluded the English cruisers, in order to carry this property safe into a French port. He was, however, condemned.—Let the reader reflect on the difference between the conduct of the English cruisers in this case, and that of the Council of Prizes.

## No. 10.

*Case of the American Ship the Brothers,  
Fish, Master.*

THE *Brothers* sailed from Virginia the 30th of October, 1807, bound to London. Being off the Land's End on the 24th of December, she was boarded by an English ship of war. Three days after she was taken by *La Revanche* privateer, and carried into Calais.

The ship and cargo, which consisted of tobacco, were condemned.

## No. 11.

*Case of the American Ship the Speculator,  
Henry Little, Master.*

THE *Speculator* sailed from America in April, 1807, for Liverpool. From thence she went to Christiansand, in Norway, and then to Amsterdam; where, not being able to get a cargo, she cleared out in ballast for Savannah, on the 6th of January, 1808.

Being, on the 11th of the same month, off Calais, she was captured by the privateer *L'Entreprenant*, and carried into Calais. This vessel was condemned on the *Berlin decree*, for having been in England after its promulgation!

## No. 12.

*Case of the American Ship the Jersey, R.  
Williams, Master.*

THE Jersey sailed from New York, the 26th September, 1807; her cargo consisted of sugar, coffee, pepper, tobacco, &c. bound to Leghorn, with liberty to touch at Palermo, and valued at 44,000 dollars, the property of H. and L. Phillips of New York. Her papers were all in due form. On the 8th of December, she was off Sicily, and being short of provision and water, she entered the port of Palermo; eight days after she quitted the said port, and proceeded to Leghorn without even opening her hatches: she was scarcely at anchor in Leghorn, when the French Custom House officers took possession of her. Her cargo was unloaded and deposited in their custom house. Captain Williams was kept prisoner on board of his own ship. The Milan Decree could not be applied to the Jersey, as she did not even see an English vessel during her voyage, but was sequestered on account of her having touched at Palermo.

The counsel for the claimants contended, that the Berlin Decree only meant to prevent neutrals coming from or going to the British Isles, or her colonies; but surely *Palermo* was neither a British isle, or subject to British sovereignty; even in that case the Decree only excluded her from a French port. Besides, the Jersey sailed from Palermo, on the 16th of December, a day previous to the Milan Decree. Therefore neither the Berlin or Milan Decree could be applied to her. However the Council of Prizes thought otherwise, and the ship and cargo were condemned.

## No. 13.

*Case of the American Ship, the Windham,  
Paine, Master.*

THE *Windham* sailed from New London for Demerary, the 9th of November, 1807: she arrived there the 9th of December; she disposed of her cargo.

At Demerary, Captain Paine took in a cargo back for New London, consisting of 104 pipes of rum, molasses, old copper, &c. and sailed from thence the 4th February, 1808. On the 21st of the same month, she was met by the French frigates, *L'Italienne* and *La Sirene*, which were returning from Martinico to France. The French commodore sent on board the *Windham* to examine her papers, and finding that she came from a port in the possession of the English, ordered the captain, crew, and passengers to be brought on board of his frigate, as also the rum and the copper, and then ordered the *Windham* and the remainder of the cargo to be burnt. The owners brought the affair before the Council of Prizes—vain attempt! The conduct of the French commodore was declared to be just and legal.

## No. 14.

*Case of the American Ship Cadus, Obea  
Butler, Master.*

THE *Cadus* sailed from New York, the 28th of November, 1807, bound to Marseilles. Her cargo consisted of sugar, coffee, logwood, &c. &c. valued at 63,000 Dollars. The cargo was at the disposal of a supercargo on board, Mr. Joseph Icard, and consigned to Jacques Icard at Marseilles. The third part belonged to Icard, the supercargo, a Frenchman; another third to Rossier and Roulet; likewise Frenchmen established at New York; and the other third to Mr. Mountforde, Member of Congress.

On the 14th of January, 1808, the *Cadus* being off Toulon, was boarded by an English frigate, who examined her papers and suffered her to proceed on her voyage. When she was a league off Marseilles, her port of destination, and had already a pilot on board, she was boarded by the French brig of war *La Jalouse*, and conducted as a prize into Marseilles.

The captors prayed for condemnation on the Milan Decree of the 17th December. The claimants, on the other hand, contend that the English frigate had done nothing more than examine her papers (which right has never been contested) without prescribing any orders to the *Cadus*; hence, it is evident, that the English frigate respected our neutrality and our flag, and did not violate any of our rights; besides the English frigate was stationed off Toulon in the jurisdiction or territory of France, and was not on the high seas; how can therefore a neutral unarmed ship defend itself, when the other belligerent has not the means of keeping her own coasts clear of her enemy? Ship and cargo were condemned.

## No. 15.

*Case of the American Brig, James Newman  
Captain.*

THIS is so extraordinary a case, that I cannot resist the impulse which leads me to give a complete translation of the *memoire* presented to the *Council of Prizes* on behalf of the captured.

“Of all the seizures,” says Monsieur De la Grange, “made in virtue of the Decree of the 17th of December: there is not one in which the *excess of zeal\**, and the mistakes which followed, are more striking than in this affair. The law which it is wished to apply to the *Charleston*, would be sufficient to acquit her; and yet this vessel has been is sequestered in the port of Bourdeaux ever since the 15th of January, 1808.

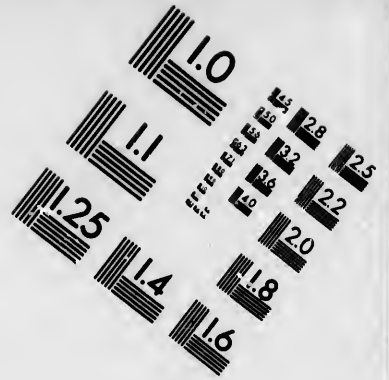
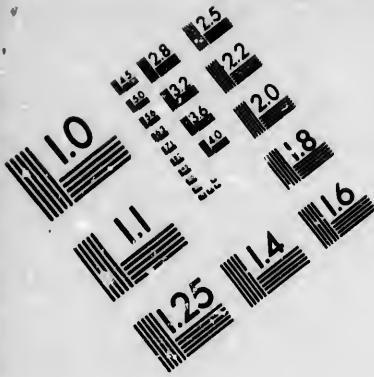
## FACTS.

The *Charleston* sailed from New York for St. Sebastian, on the 26th of September, 1807, nearly three months before the Milan Decree: she arrived at the port of PASSAGE, a sea port of Spain, in the Bay of Biscay, a few miles to the Eastward of St. Sebastian, her port of destination; this was on the 23d of November; she there performed quarantine † for a few days,

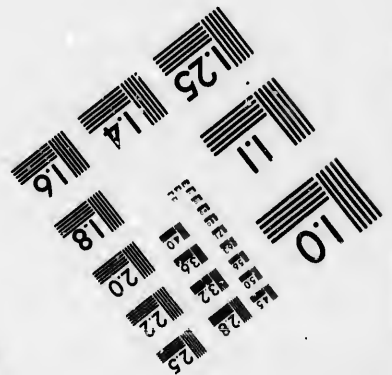
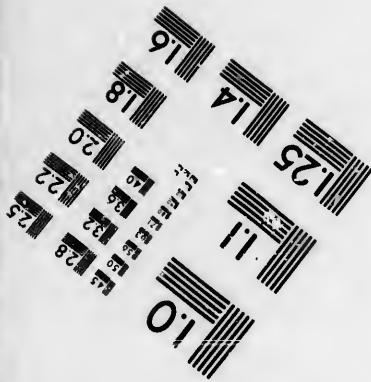
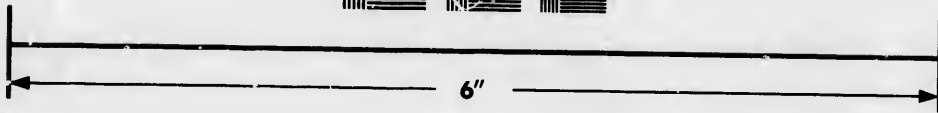
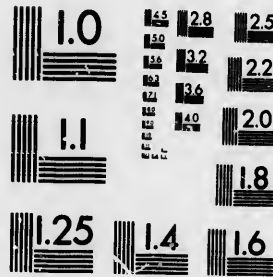
\* This is the modest expression which this learned and prudent Advocate was, from his situation, obliged to use, instead of the most *wicked* attack that could be made on the rights of a neutral power. I give the *whole* of his reasoning, because it justifies what I have said in the preceding sheets, and because I think it will satisfy every impartial reader, that an honest Frenchman feels the same abhorrence that I do, not only to the Milan Decree, but the manner in which it has been applied, or to write more correctly, misapplied.

† The reader will have the goodness not to impute to me an ignorance of the word, which means forty days, but to understand that here it was a temporary detention.





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and then pursued her course to St. Sebastian, where she arrived on the 1st of December, 1807, more than a fortnight before the issuing of the Milan Decree.

Her cargo consisted of sugars, cocoa, and cotton.

St. Sebastian not offering any advantageous returns, Captain Newman conformed to the instructions of his owners, and went to take in a cargo at Bourdeaux.

He went from St. Sebastian in ballast the 15th of the same month of December 1807, and entered the river of Bourdeaux, the 17th, the very day when his Imperial Majesty signed, at Milan, the Decree which it is wished to apply to this case.

After having undergone a new quarantine, the Charleston was admitted to make her entries. Her consignees had procured her a cargo; she was on the point of setting sail for New York, with our wines, and our brandies, when on the 15th of January 1808, the officers of the customs thought it their duty to sequest her,

Thus was lost a voyage advantageous for the owners, and still more advantageous for those from whom Captain Newman had just purchased the commodities.

More than eight months have since elapsed: the vessel is losing her value to the owners, by the expenses inseparable from so long a detention. We must therefore *enlighten* the *ustice* of the COUNCIL \*, and prove how strange is the abuse which is made of the law.

The *neutrality* of the Charleston neither *has* been nor *can* be disputed.

She has the following documents:

A *Register*, which proves that she is of American built, and that she belongs to two citizens of the United States.

A *Licence* for the voyage from New York to St. Sebastian.

A Turkish passport †.

\* Monsieur De la Grange might have saved himself the trouble of this attempt. The Council had no *Justice* to be *enlightened*, the ship and her outward bound cargo were at all events to be condemned.

† In all cases a Turkish passport is mentioned; it is intended as a protection against the Algerines and other states of Barbary; but could not have any relation to a question arising before the Council of Prizes in Paris.

Two certificates proving that James Newman succeeded the former captain, who died at the Havannah.

A journal regularly kept.

A muster roll, which proves that of seven men employed on board, six were Americans, and the other a citizen of Bremen.

Let us see then how, with documents so complete and so authentic, the Charleston could have been seized in virtue of a law made the *very day* she entered Bourdeaux.

It appears, that as a measure of surety, and when the Decree of the 17th of December, was officially known at Bourdeaux; the comptroller of the customs ordered the Journals of all the neutral ships then in the port to be presented to him. The motive of this measure was, no doubt, to ascertain what vessels had undergone the visit prohibited by the Decree.

So far, this measure of authority may be admitted to have been regular, though certainly severe. But to have supposed that *neutral vessels, which had entered a French port, BEFORE THE DECREE*, could be subject to it, is, we confess, what we can neither comprehend nor explain.

However this may be, the Charleston was subjected to the common fate. Her journal was submitted to the examination (verification) of the officers of the customs.

A *Proces verbal* was drawn up the same day, the 15th January, and an investigation made of the articles of the journal; of which the result was that, beside the facts above set forth, "the said vessel, during her passage, had neither touched, looked into or stopped at any port of the enemy, nor been occupied by enemy's troops; that she had paid no imposition to the English Government, *nor been visited by any ship of that nation.*"

The latter part of this report is not correct. In examining the Journal more minutely, the following note is found:

"Sunday, 1st November 1807;"—observe, reader, *six weeks* before the date of the Milan Decree—"Wind, NNE. steering towards the ENE. then to the SE. we hauled down, on re-

ceiving a shot under the wind from a sail, to which we were obliged to bear; and met her. She saluted us under French colours; but being conducted on board, found that she was a privateer from Guernsey of 16 guns, lat. observed 41. 24.

“The 2d November, 1807, at two o'clock P. M. the privateer's people sent the Captain back, and we made sail.”

It is on account of this incident, it is because the *Charleston* had been *visited* on the *1st of November*, that the administration of the Customs have thought fit to put this vessel under sequestration: and as no *law* anterior to the *Decree* \* of the 17th of *December*, had declared the *visit* a ground of sequestration or of confiscation, we must conclude, and the proces-verbal of seizure says in direct terms, that it is in *execution* of this *Decree*, that it has been *supposed* regular to have recourse to a measure so severe.

The only question to be decided therefore is, whether the *Decree of the 17th of December* can be applied to a *visit* made the *1st of November*. It would be to insult the magistrates to agitate seriously such a question before them.

Some opinions may have been given in favour of the *retroaction* relative to the *knowledge* which the ships *visited* may have had of the *law*: in other words, it may have been pretended, that a ship *visited* since the *Decree*, was submitted to its dispositions, notwithstanding they could not be known to those to whom they were applied: but nobody has hitherto either said or thought that the *law* could have any operation on a *visit* which had taken place *before its existence*; that, as in the present case, the *Decree* could be applied to a fact which happened forty-seven days *before* its promulgation.

But further, the *visit* not only preceded the *existence* of the *law*; it was even *anterior* to the *motive* which the Sovereign has alleged for promulgating it. “Considering,” says the preamble to the *Decree*, “the measures adopted by the British Go-

\* In France, an arbitrary *Decree* of Bonaparte is a law superseding all preceding laws, and has a *retroactive* effect: what would our Democrats, as they are falsely called, say to the King's assuming a dispensing power?

vernment, of the date of the 11th of November last: considering that, by these acts, the British Government has *denationalised* the ships of all the nations of Europe."

Such are the motives expressed by the Legislator himself; they are exclusively founded on the tyrannical \* dispositions of the 11th of November.

But our visit took place 10 days before. It is, therefore, true, not only that the fact to which it is wished to apply the Decree, is *anterior* to its *existence*, but further, that it preceded that attack upon the law of nations, *without which the Decree would never have existed* †.

To apply this to the *Charleston*, it would be more than to make the Decree have a retro-active effect; it would be to place the effect before the cause, and to say that these dispositions could govern an epoch at which they could not EVEN EXIST.

Thus falls to the ground, *so far as respects the present case*, the forced argument of those who have said, that "the Decree of the 17th of December was so much a necessary consequence of the English Orders of the 11th of November, that the mere simple knowledge of the latter, ought to have put neutrals on their guard against the just reprisals which the Decree has established."

Yes, this reasoning, if reasoning it can be called, must fall before the evidence in the present cause; and we shall answer to those who have hazarded it—"It was on the 1st of November that we were visited."

What then could Captain Newman do, at this period? We do not examine whether he could have *prevented* the visit. The law of force, and of necessity, has long ago given a solution to this question; "that a neutral without arms, and without means of defence, cannot resist the guns of an armed ship ‡."

\* These are the *forced*, not the *voluntary* words of Mr. De la Grange.

† Here Mr. De la Grange again acts the *prudent* part. The Decree would probably have existed, if the Order of the 11th of November had never been issued.

‡ The whole reasoning in this case consists in a chain of *truisms*, which is

But we say further, that he *ought* not to have *resisted*, and that, at the time of the visit, he could not know or observe any other laws than those which were in force on the 1st of November; that is, the common law of Europe, the dispositions of our *ordonnance* of 1681, and the *arrete* of the 2d Prairial, which punished the *refusal* to submit to be visited, with the same penalty of confiscation, which the custom-house of Bourdeaux would wish to apply to us to-day, "for having *been* visited."

We may then say, with that statesman who presented to the Legislative Body the 2d Article of the CODE NAPOLEON;—"Far be from us the idea of those laws with two faces (having a double aspect) which, having incessantly *one* eye upon the *past*, and the *other* on the *future*, would dry up the sources of confidence, and become an eternal principle of injustice, of general destruction, and of disorder."

To conclude, the Decree is so evidently inapplicable to the present case, that it is impossible to conceive how the Officers of the Customs could see in it any foundation for a measure so fatal to Captain Newman.

But this foreigner has not been the *only* victim of a zeal carried beyond its natural limits.

There is another case which we must cite, on account of its analogy to the present, and of the irresistible authority with which it furnishes us.

It is that of the *Charleston-packet*, of which the voyage presented the same incidents as that of the *Charleston*.

This vessel also sailed from the United States for St. Sebastian, in September 1807; she was visited by an English frigate on the 22d of October. Like the *Charleston*, she sailed in ballast from St. Sebastian for Bourdeaux, was visited the 3d of December, in the course of this second passage; and, like the *Charleston*, entered the Gironde before the promulgation of the Decree.

sometimes ridiculed as superfluous; but Mr. De la Grange knew to whom he addressed his MEMOIRE; and yet he found his truisms were disregarded.

The Customs had also seized this *Charleston-packet*; they had also deprived her of an advantageous voyage; but what was the result of this measure? By the decision of the 18th of May, 1808, the Council order the seizure of the *Charleston-packet* to be annulled.

Surely, if there exist, between the two cases, any difference, it is altogether in favour of the *Charleston*, as she went from St. Sebastian to Bourdeaux, *without having been visited*, a circumstance of good fortune which had not happened to the *Charleston-packet*.

As to *other* circumstances, the two cases present the most striking conformity, since the two ships, on the same voyage, were both, before the 11th of November, visited in going from the United States to St. Sebastian.

*Eadem ratio, idem jus*: the magistrates who acquitted the *Charleston-packet*, will regret that they have not sooner rendered the same justice to the ship on the fate of which they are going to pronounce\*.

All this reasoning was without effect; the vessel, and her outward-bound cargo were condemned.

\* No! they will not regret it: from the natural impulse of justice, they had acquitted the *Charleston-packet*; but from the displeasure expressed by his Imperial Majesty and King on that decision, the Council felt no repugnance at condemning the *Charleston*.

## No. 16.

*Case of the American Brig Sally, consigned to  
Messrs. Ridgway, Mertins, and Co. Mer-  
chants, at Antwerp, Captain Brown.*

THIS ship, loaded with sugar, coffee, cocoa, and staves, set sail from Philadelphia for Bourdeaux, the 9th of November, 1807.

No question was made as to the regularity of her voyage; and it was admitted that her cargo was for the account of American citizens. She had on board every document that could be required. She had a dangerous voyage. Several leaks were sprung a very short time after her departure; she was only in the 62° of longitude, when she was obliged to work the pumps every half hour. At last Captain Brown hoped that he should soon come to the end of this dangerous voyage; on the 29th of December he was within twenty leagues of Cordova, when he was *stopped* by two *English* frigates, the *Tribune* and the *Indefatigable*.

These frigates accosted the *Sally*, and the Captain of the first indorsed what follows on one of the ship's papers:—

“ You are *warned*, by these presents, not to enter into any of the ports of France, or her dependencies, also into those of Portugal, of Spain, Italy, of the Mediterranean, or the colonies of France or of Spain; but on the contrary, to go to some one of the ports of the United Kingdom of Great Britain.— Given, &c. 29th of December, 1807.”

It is easy to perceive the extreme embarrassment of Captain *Brown*: stopped by an obstacle which it had not been in his



power to overcome; obliged to retire to some shelter, since his ship could no longer keep the sea; being necessarily ignorant of the Decrees of November and December, he was compelled to take the only step which could save his brig and crew; he made sail for the first English port. He was fortunate enough to reach Plymouth, where he anchored the 7th of January, 1808.

Authentic papers found on board, prove that in fact there were no other means of safety for the *Sally*: beside the leaks of which we have spoken, her sails, rigging, tackle, furniture, all had considerably suffered in the course of this dangerous passage.

A long and expensive repair was necessary. The vessel could not go to sea again before the 18th of February.

On that day she cleared out for Rotterdam, the port which her owners had pointed out to her, in the case that had happened, of her destination for Bourdeaux being frustrated.

This first attempt was not successful; contrary winds and squally weather prevented the *Sally* from continuing her course; she put into Portsmouth the 20th of February. A struggle of two days against the elements had produced new damage; it had become again necessary to repair the brig, and she could not quit Portsmouth till the first of April.

The very next day she encountered a dreadful tempest, and Captain Brown thought himself fortunate in finding shelter in the port of Dover.

He put to sea again the 7th of April; but new misfortunes still attended him. He experienced the most contrary weather. He wished to anchor; he *lost* his anchors. In short, there remained to him but one, and his vessel was in the most perilous situation; when, on the 9th of April, he sought safety in the road of Flushing.

He had been there four days, occupied in repairing his damages, when he was seized by the Commissioners of the Customs.

The vessel was conducted to Antwerp, and unloaded. The

goods had suffered so much, that the Comptroller of the Customs, anticipating the intentions of the consignees, demanded provisionally permission to sell.

This permission was granted by the Council on the 4th of May, 1808, and it is on the produce of this sale that they have now to determine.

To understand properly the applicability of the decrees in this case, it must be recollected, that the *Sally* sailed from Philadelphia the 9th of November, 1807, and consequently *before the existence* of either of the decrees. Whence it results, that persons interested in this voyage could have no knowledge of these new dispositions; that they know not, and could not know any thing further than the decree of the 21st of November, 1806 (the Berlin decree); and even, that they only knew this with the interpretation given to it by *his Excellency* the Minister of Marine, the 24th of December in the same year.

The circumstance of having been in an English port, *even if it had been voluntary*, could not constitute, according to this decree, a ground of *condemnation*.

The mere *exclusion* from French ports, or confiscation in case of a *fraudulent attempt* to enter, were the only penalties pronounced by the decree against the ships and merchandise of *neutral origin*, which came to France after having touched in England.

This was all that Captain *Brown* knew, and all that he *could* know, when, on the 29th Dec. he adopted the *forced* resolution of taking shelter in an English port.—He could not know the more severe dispositions that have followed, since they were only taken on the 23d of November, *fourteen days after his departure from Philadelphia*. Much less could he know the prohibition relative to the *visit*, since the latter, of a still more recent date, was created only by the decree of the 17th of December, *thirty-nine days after the departure of the Sally*.

The captain *did* not, and *could* not know, on this subject, any thing but the common law of nations, the ordonnance of the marine, and the *arrete* of the 2d Prairial; authorities which

far from indicating a *contravention* in the *visit*, commanded him to *submit* to it, under pain of *confiscation*.

The facts thus established, and independently of the superior force and the care of his own safety, which constrained Captain *Brown*, it must be felt, that it was his *duty* to act, and his *legal right* to act as he did.

To punish him for this conduct, would be to presuppose that he could contravene laws which it was impossible for him to know. *Moral* laws are known, or must, in the nature of things, be *supposed* to be known to *all* men, and he who transgresses them cannot save himself from punishment by pleading *ignorance* of them; but *positive* laws, which have only a *particular* interest in view, cannot be transgressed, while it is *impossible* they should be known. This would be to fall into the fatal error of *retroaction*, since it is a principle consecrated by the laws themselves, that they can have *no operation* on those who cannot know them.

This species of retroaction relative to the knowledge that may have been had of the law, is expressly consecrated by the first article of the Napoléon Code, and by the *arrêté* of the 25th of Thermidor, year 11, which, in *execution* of the law, has determined the periods of time, after the expiration of which the laws shall be considered as known and obligatory.

What the civil code has judged necessary and just with respect to the mutual relations of citizens, must be equally just and necessary in the relations between nation and nation. The law which fixes these relations, is not indeed written: but it is not the less certain or immutable; it consists in the code of natural equity, which says, that in order to contravene, we must have the *intention*, and that to have the *intention* to contravene, we must *know* the *prohibition*.

The treaties which we might consider as detached chapters of this grand code of natural law, have also consecrated the theory of distances, relating to the retroaction of laws.—We might cite a number of examples; but as this is an *American* ship, it is more simple to draw our authority from the contract

which guarantees the rights and the obligations of the two powers.

The 15th article of the convention of the year 9 says, that in case of war between one of the two states and another power, the property of the state remaining neuter cannot be confiscated, though found *under an enemy's flag*, if more than *two months* have not elapsed between the declaration of war and the time of loading.

What force ought not this disposition to have, when applied to the decrees of November and December, 1807?—Here all is in favour of a justice at least equal; for, in short, a declaration of war is never so unexpected, as that a multitude of preceding symptoms may not enable us to calculate upon it, and foresee it: whereas, the decrees *provoked by English tyranny*\*, were so much the more unforeseen, that their dispositions are in direct opposition to that common right, and that liberal legislation which they were destined to re-establish among independent states.

But to assimilate the two cases, it must be concluded that the decrees, in terms of the treaty, cannot be applied but to ships sailing from America *two months* after their promulgation.

It has been just observed, that the *Sally* sailed *fourteen days* before one of the decrees, and *thirty-nine days* before the other: they cannot then be applied without producing a *retroaction* of *seventy-four days* for the dispositions of the decree of November, and *ninety-nine* for those of the decree of the 17th of December.

Surely this misfortune cannot be reserved for those interested in the *Sally*; they have a sure guarantee from this in the jurisprudence of the COUNCIL, and in the will solemnly pronounced of the SOVEREIGN.

The first results from all the decisions of the COUNCIL, since they have applied the decree of the 21st of November, 1806. Such has been, on this point, their respect for the protecting

\* Let the reader not forget, that this is the forced language of a French advocate, to whom it would have been fatal not to have pretended to find some excuse for the decrees.

principle of *non-retroaction*, that they have acquitted even the ships, which, by forced entries into the enemy's ports, have remained there long enough to have known the penal dispositions of the decree.

The Sovereign himself applied the law in the same manner, when, in the case of the capture of the *Vermont*, he said that the ship was subject to confiscation, *because, between the 21st of November and her departure from the American port, a SUFFICIENT TIME had elapsed for her to have known the decree.*

Then applying the rule to a *contrary* case, the law cannot have any operation *when a sufficient time has not existed.*

On these principles the *Sally* must be restored, even if there were nothing extraordinary in her favour; but there are circumstances in her case which cannot but add force to her reclamation.

We have seen that she had a most painful passage; she was sinking from her leaks, when she was met and stopped by the English frigates; that then she had no option; that she could neither return to the United States, nor attempt to get into any port of France; that when she arrived in England, it was necessary to undergo repairs; that this happened to her twice, and each time to have to repair considerable damages; that, in short, always persecuted by the elements, she went to seek an asylum in Flushing, when the public authority thought fit to seize her. From hence it must be concluded, that Captain *Brown* never followed the impulse of his own will; and that, under all the circumstances under which he found himself, he only yielded to a *superior force which he could not resist.*

The chief conclusion from this is, that this captain had a right to the *protection*, or, if you please, to the *compassion* which the French laws and French magistrates have always granted to those whom *misfortune* has conducted to our *hospitable shores*. In such cases French generosity has always made general and rigorous principles and laws bend to the particular case of hardship and distress.

Thus, notwithstanding that a French or allied ship is considered to belong to the enemy, if the latter has had

her in his possession for more than twenty-four hours, the law has never taken advantage of this circumstance. It has been said, that the ship which, in *such* circumstances, shall have been thrown upon our coasts, ought to be restored to her former owners. (*Ordonn. de la Marine, tit. des Prises, Art. 9; Arrêté du 2 Prairial, Art. 55.*)

We find in this disposition the principle of the *inviolability of misfortune*. Nothing could better prove the spirit of French legislation, and nothing can be more justly applicable to the present case, since in this, as well as in that which the law has foreseen, we have no other interest to combat than that of the State \*.

And since, in the case of *shipwreck*, the state renounces the property legally acquired to her, it seems natural to conclude, that even on the supposition that there were a *denationalisation* in the present case, the State would feel the same motives for not enriching itself with the spoils of misfortune.

There is a perfect parity here; for the *Sally*, if the decrees were applicable to her, could not be more *denationalised* than the French ship which had been in possession of the enemy for more than four-and-twenty hours.

How strong soever may be the analogy here, let us prove that generosity has gone farther still; let us recall to the Council, that they have respected the rights of *misfortune*, even when they have had to judge of enemies.

The affair of the *Diana* is within the recollection of everybody. The *Diana* had been condemned by the two subordinate tribunals; because, although she was under the Prussian flag, she was without a passport; because her muster roll was irregular; because there was a false destination; in short, because she was loaded with merchandize proscribed by the law of the 29th Nivose. This ship was, therefore, *denationalised*, or, what was still worse, could not justify her *nationality*.

The Council had to decide definitively on her fate, the 25th Ventose, year 9.

\* Observe, that in this case the captors were the Commissioners of the Customs at Flushing, and not a French privateer or ship of war at sea.

After having discussed the different heads of condemnation, the magistrate entrusted with the public ministry, the only adversary of the claimants, developed, on the *right of asylum*, principles which we cannot *abridge*, without *weakening* them.

“ But a more powerful motive still,” said this enlightened officer, “ ought to determine this decision : *it is the respect due to misfortune.*”

“ The *Diana* was cast upon our shores by a tempest. *It was to withdraw herself from an imminent danger, that she sought an asylum in a French port.*

“ The danger which induced her to enter, and the Prussian colours, the respected signal of a constant neutrality, promised her, on our coasts, protection and surety.

“ Yet, with respect to her, the rights of hospitality and of asylum, are violated ; her confiscation is urged with bitterness ; it has even been *pronounced.*

“ The exercise of such a rigour is contrary to the rights of nations, to *our laws*, and to the *constant usage* of nations.

“ A law of Constantine ordered that a vessel wrecked should be restored to the owner.

“ An edict of Henry III. of England, ordered that the remains of a shipwreck, and all the effects saved, should be restored to the owners, and freed from all right of shipwreck.

“ It was agreed. by a treaty of peace and commerce which took place between Henry VII. and Philip, Archduke of Austria, in 1495, that the remains of a shipwreck should not be subject to confiscation.

“ An ordonnance of Francis I. made in 1543, declared, that in case of shipwreck, *in default of a claim within a year and a day*, one-third should belong to the salvors, a third to the admiral, and the last third to the king\*.

\* If this worthy magistrate had been acquainted with our statute-book, he would have found, from the 3d Edw. I. down to the 26th Geo. II. many laws to strengthen his argument. I. G.

“ The first article of the title *Shipwreck*, in the Ordonnance of the Marine, puts under the protection and safeguard of the king, the ships, their crew, and their cargo, which shall be thrown by tempest on the coast of France.

“ The second article of the law of 29th March, says, that no foreign ship, which, in the course of her voyage, shall have entered an English port, shall be *admitted* into a port of the *French Republic*, except in a case of *necessity*; in which case, she shall be obliged to *leave* such port as soon as the *causes* of her having entered shall have ceased.

“ The King of Denmark has issued a declaration, importing that even ships of *war* of *hostile* powers, which shall have been stranded on his coasts, or *shall have been obliged to enter his ports by the dangers of the sea*, shall go out freely after the danger past.

“ Let me be permitted,” continued this humane and enlightened magistrate, “ to bring to your recollection a circumstance preserved to us by the author of the Philosophical and Political History of the European Establishments and Commerce in the two Indies.

“ The *Elizabeth*, an English ship of war, was on the point of foundering, when she preferred entering the port of the Havannah: this was an *enemy's* port; and war raged in all its fury.

“ I come,” said Captain *Edward* to the Governor of the place, “ to deliver to you my ship, my sailors, my soldiers, and myself. I only ask you the lives of my people.”—“ I shall not,” said the Spanish Commandant, “ do a dishonourable action: if we had taken you in battle, in the open sea, or upon our coasts, your *ship* would have been *ours*, and *you* would have been *prisoners*. But, beaten by the tempest, and *driven into this port from the fear of shipwreck*, I forget, as I ought to forget, that my nation is at war with yours. You are men, and we are men too; *you* are *unfortunate*, and *we* ought to have *compassion*. Unload then in confidence, and repair your vessel. Trade, if it be necessary, in this port, to the extent of the ex-



penses you have to pay. You shall immediately after depart, and you shall have a passport beyond the Bermudas. If you be taken after that time, the right of war will have put you into our hands. But at this moment, I see in the English only foreigners for whom humanity claims our relief."

"I should think," concluded this magistrate, "that I were wanting to my own character, and to my duty to the COUNCIL, before whom I have the honour to represent the government, if *I insisted further on principles so solemnly recognized by our laws and those of all nations.*"

"Let the probity displayed on all occasions by the French Government serve as a basis for your decision. Our enemies recognize and respect its magnanimity; let us prove that it is *always* generous and just."

These conclusions were adopted. The COUNCIL restored the *Diana* and her cargo.

Are the principles *then* consecrated, *now* changed? Are sentiments so noble now effaced?—Magistrates! consult your hearts; they will tell you, that an immense increase of glory and of power ought to redouble the generosity which directed you in the decision in the case of the *Diana*.

We should then have nothing for the *Sally*, even if she were in the case of confiscation foreseen by the decrees.

How can this vessel become an acquisition to the domain, when, to the safeguard which compassion assures to her, is added the certainty that the decrees cannot be applied to her?

These unanswerable arguments on the *justice* of the case, and this pathetic and authoritative appeal to the code of humanity, hitherto recognized and acted upon by the tribunals of all *civilized* nations, had no effect. The boasted justice and generosity of the French seem to have fallen prostrate at the feet of their great enslaver Napoleon. The same COUNCIL, though not probably composed of the same MEN which RELEASED the *Diana*, CONDEMNED the *Sally*.

## No. 17.

*Case of the Octavie, J. G. Collins Master.*

THE above ship sailed from Charlestown, in America, on the 30th of December, 1807, and bound for London; but having been spoken to, and nothing more, by two English ships of war, she was captured by the French privateer *Le Grand Napoleon*, and carried into Calais.—The ship and cargo condemned.

## No. 18.

*Case of the American Ship the United States,  
Captain Harding, Maritime Agent of the  
United States at Cadiz, Consignee of the  
Cargo.*

THIS is a case of some interest; but I do not mean to give much of the arguments, because they are in truth nothing more, or not much more, than those urged in the case of the *Sally*, and some others which I have before given at full length. I shall

content myself with stating the facts, and a few observations more particularly applicable to this case.

This vessel sailed from Norfolk, in Virginia, for Algeiras, a seaport in the Bay of Gibraltar, and about ten miles to the north of that fortress.

This was on the 25th of December, 1807, only *eight* days after the promulgation of the Milan Decree, at a period when it was impossible the existence of that Decree could be *known* in America, supposing America to have been bound by it, if it *had* been known.

It is necessary to state the contents of her cargo, to shew that it was *impossible*. I beg pardon for the expression "impossible!" because no transgression of the law of nations and of *moral* justice is impossible to Bonaparte! nothing but *physical* impossibilities can stop his career. I say impossible, according to every acknowledged principle of the law of nations, or of justice, to condemn this ship.

Her cargo consisted of 2,000 barrels of flour, on freight, for the account of a house in Philadelphia, and 11,500 staves, for the account of the owners of the ship.

The neutrality of the ship was justified by every document found on board; in fact it was not disputed by the captors: but they said she was *denationalised* by the terms of the Decree of the 17th of December, 1807.

They further *alleged*, but without semblance of proof; but they *alleged* that she was for *enemy's* account, or at least, that she was *insured* in an enemy's country.

And further they *alleged*, but still merely alleged, for all the proofs were against these allegations, that she had *attempted fraudulently* to get into Gibraltar; and that she carried provisions to an enemy's fortress in a state of blockade.

It is true she carried *provisions*, not for an enemy's fortress in a state of blockade, but for the allies of Bonaparte.

The vessel was just on the point of entering Algeiras, the place of her destination, when she was descried by twelve privateers, one French, (the *Diablotin*) and eleven Spanish. She was captured and conducted into Algeiras. She was in the

first instance sequestered; but a dispute arose between the eleven Spanish privateers and the *Diablotin*, who was intitled to her. The *Diablotin* grounded his pretensions on the circumstance that it was he who had put men on board to take care of her.

The cause was removed to the COUNCIL of Prizes at Paris; a long argument was held as to the right of jurisdiction, with which I shall not trouble the reader, because she was afterwards simply condemned on the principle that she had been *visited* by *English* cruizers.

The advocates for the vessel insisted on the principle they had, to use their own language, so often invoked in vain, that if she *had* in fact been *visited* in the sense of the Decree, the latter could not be applicable to her, because she could not know of the existence of the Decree when she sailed—the *non-retroactive* principle.

But they insisted that she had not in *fact* been *visited*.

Captain *Harding*, they said, (and they were not contradicted) on his interrogatories on this pretended *visit* (search), *answered*, “ that about the latitude of Cadiz, he had been *hailed* by a ship of the English squadron, which ordered him to go and speak to the Admiral; that in the interval there came two or three boats on board, to ask him whether they might buy flour for their use; that he REFUSED to sell them any, telling them that he was consigned to *Algesiras*: that a long time after, as he was sailing at a small distance from the squadron, he was *hailed* by another bark, with an Officer, who asked him for three or four barrels of flour, to which he answered as before; that having asked the Officer what he wished with him, the latter answered that he should return to his Commander and make his report; that seeing nobody give himself any trouble about him, he veered about, and made his way to *Algesiras*,” when he was taken by the *Diablotin* and the eleven Spanish privateers.

Such are the facts, says the French advocate, which prove that there was no *visit*, in the sense of the Decree, and he goes on to argue upon the subject; but with the same effect as he might have reasoned to the winds.

On the other two points it would be a waste of pen and ink to say a single syllable further than that there was not the most distant pretence on the part of the captors for making the allegations.

The ship and her cargo were, however, condemned.

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No. 19.

*Case of the American Brig the Thomas Jefferson, Goodrick Master.*

THE above brig sailed from Boston to Baltimore on the 10th of August, 1805, there she took a cargo of American produce for Hamburgh, at which port she arrived on the 26th of November, in the same year; sailed from thence for Bourdeaux, where she arrived the 2d of April, 1806. From thence she went to Lisbon with a cargo of wine, and returned to Bourdeaux the 20th July, 1806; took in another cargo of wine for Tonningen; from thence she went again to Bourdeaux, where she arrived on the 23d of October, 1806. After which, and till she was captured, this vessel made five voyages from Bourdeaux to Morlaix, with wines. She arrived last at Morlaix on the 27th of December, in the same year; and after having discharged her cargo of wine, belonging to a French house, she took in ballast to go back again to Bourdeaux, when Captain GOODRICK was arrested by the *Commissaire de Police*, and sent to Paris under an escort. On his arrival there, he was interrogated by Mr. *Le Conseiller d'Etat REAL*, and was liberated; but the ship was,

by order of the Senator, Minister of Police FOUCHE, sequestered *provisoirement*. The reasons were:—that the Captain not having been visited by the English, is a proof that he was protected by them. And also, that the Captain *perhaps* gave them some information of what was going on in France. And lastly, that the mate was an Englishman, &c. &c. Notwithstanding all these ridiculous charges, *The ship was condemned*. The Captain was even obliged to maintain his ship's company during the ten months that they were detained as prisoners of war, from the time of the sequestration of the ship till it was definitively decided by the Council of Prizes in Paris.

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No. 20.

*Case of the American Brig the Edward, S.  
Lewis Master.*

THE *Edward* sailed from Philadelphia the 21st of November, 1807, and bound for Nantes, laden with cotton, sugar, and indigo. When she was off the *Loire*, she was *hailed* by a cutter under French colours, which however proved to be an English man of war. Being stormy and foggy, the *Syren* was obliged to go into the *Ile de Rhe*. On the same day, the 6th of February, a pilot came on board, and brought the ship to an anchor in the roads of St. Martin.

Captain Lewis was immediately ordered to go on board the French guard-ship, where he was informed of the Milan De-

crec, and the Orders of Mr. *Colin*, Comptroller General of the Customs, which were, as has already been related, to seize all American ships which were visited by the English, either anterior or posterior to the Milan Decree.

Ship and Cargo condemned.

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No. 21.

*Case of the American Ship the Phoenix, Captain Warner.*

THE above ship sailed from Baltimore for Trinity, in the island of Cuba, on the 1st of November, 1805!! (consequently a twelvemonth before the Berlin Decree) loaded with American produce. The owner of the ship and cargo, Mr. GEORGE ERICH, merchant of New York, was himself on board. She was near her port of destination, when she was met on the 15th of the same month by a French privateer, *La Jeune Estelle*, of Santo Domingo, who captured her, and sent her into the port of Samana, in the said island. The charges brought forward against the *Phoenix*, were, that the cargo, which amounted to about 26,000 piastres, was too rich to be destined to Cuba, and they suspected that she was bound to St. Domingo, then in a state of revolt against France. The second charge was, that Mr. GEORGE ERICH, the owner, was by birth an Hanoverian, consequently an enemy.

To the first charge there could be no reply, as it was only a suspicion; and as to the second, it was *proved* that Mr. Erich had been in America since 1799; and in the year 1804, was naturalized a citizen of America; and if that even had not been the case, yet at the time of the capture of the *Phœnix*, Hanover had ceased to belong to the King of Great Britain, and was entirely in the possession of the French. However just the cause of the claimants, the ship and cargo were condemned in Santo Domingo, and confirmed by the Council of Prizes at Paris.

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No. 22.

*Case of the Sally Ann, W. Nichols Master.*

(This is a contest between Bonaparte and his brother Louis, of Holland.)

THE *Sally Ann* sailed from Boston, and bound to Beverley. From thence she proceeded to Amsterdam, on the 14th of November, 1807. She was taken by the *Diana* English privateer, and carried into Bristol, where she arrived on the 25th of December. She was permitted to depart from thence ten days after her arrival, and prosecuted her voyage to her original place of destination. She had already entered the *Texel*, when a French privateer, *Le Dunkerquois*, came out to meet her, boarded her, and carried her in as a prize.

This vessel having been captured on the Dutch territory, the Government of that country claim her, and if she is given up



by France, she will be restored to her owners: for I must give the Dutch Government credit for their just conduct in similar cases, which is to *prevent* vessels from entering their ports, if they had been visited by the English, or coming from that country; but they never confiscate them, unless the neutrals enter by fraud.

In May last the cause was not decided; but there is every reason to suppose that she will be condemned, as other vessels which had been captured in a similar way were condemned. Of course the Council of Prizes *durst* not decide any cause against the interests of their Master.

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No. 23.

*Case of the Two Marys, Captain Riley.*

THE *Two Marys*, laden with cotton, sugar, &c. sailed from New York on the 26th of December, 1807, and bound for Nantes. She was visited by an English frigate shortly after she put into the roads of BELLE ISLE. As there were English ships of war cruising off the Loire, there she took a pilot on board, who would take the opportunity in the night to enter the river; however, a French row-boat, which came from *Belle Isle*, saved them the trouble of going to Nantes. The *Two Marys* was taken into *Belle Isle*, where she was sequestered with her cargo, and afterwards condemned by the Council of Prizes in Paris.

## No. 24.

*Case of the American Brig the Syren,  
J. Snow, Master.*

THE *Syren* was originally bound for Lisbon, when she sailed from the port of Wilmington in North Carolina, in the month of November 1807; she was at St. Lucar in Spain, where she was chartered to go to Petersburg with fruit on Russian account. She sailed from St. Lucar the 8th December 1807. She was met a few days after by an English Frigate, the captain of which gave her the usual notice not to proceed to a French port, &c.

In the evening of the 26th of December, being off Calais, she experienced a storm, and was driven on shore. The captain made signals of distress; a pilot came on board the next morning, who brought the ship off, and then came to an anchor, when two boats with armed men came from the shore. One was a boat's company of one of the French ships of war at Calais; the other belonged to a French privateer, *Le Rodeur*—Here a battle took place between the man of war's people and those of the privateer; however, both parties remained on board: she was taken into Gravelines, where she was sequestered, and afterwards by a decision of the Council of Prizes, ship and cargo were condemned.

## No. 25.

*Case of the American Brig the Violet,  
James Merrit, Master.*

THE *Violet* sailed from Philadelphia for Oporto, in July 1807. On her arrival there, she was chartered for Leghorn; her cargo consisted of sugar, indigo, &c. &c. and sailed for her port of destination the 13th October 1807. On the 18th, she met an English brig of war, and was allowed to prosecute her voyage; on the 25th she was boarded by an Algerine frigate, and owing to a misunderstanding which then existed between the two governments, the *Violet* was sent into Algiers, where she arrived on the 29th. On the 10th of December following, she was released by order of the Dey, and was permitted to proceed to her port of destination, where she arrived on the 3d of January 1808\*.

Immediately on her arrival she was taken possession of by the French custom house officers, and ship and cargo were sequestered (*provisoirement*) for not having a *certificat d'origine*, which was originally on board when first captured, but which no doubt those who were in possession of the ship, thought it their interest to purloin. But the owner of the cargo, who was a French citizen, Monsieur Zignago, merchant of Genoa †, produced a certificate, which luckily was written on the back of the manifest, and signed by the French consul at Oporto, and which supplied the place of the *certificat d'origine*; however it did not avail. Condemnation of the ship and cargo was pronounced by the Council of Prizes in Paris.

\* *Dey Napoleon* should take lessons on the *Laws of Nations*, and on the observance of treaties, from the *Dey of Algiers*.

† I make no doubt but Mr. Zignago would rather be a subject of the Dey of Algiers than of Napoleon; at least he found more justice from the one than the other, as the ship was released from Algiers, on account of her cargo belonging to a French citizen.

## No. 26.

MESSRS. FAESCH Merchants at Amsterdam, and Co. purchased in November 1807, 614 hhd's of Havannah sugars, from Messrs. Hope and Co. of that city by means of Sworn Brokers; 302 hogsheads (*caisses*) of which, with the *certificat d'origine*, were sent by land to the house of J. D. Schroder at Hamburg; some of the sugar, however, remained at Bremen, and 108 hogsheads were forwarded to their original destination.

On the arrival of the sugars at Hamburg, the Inspector of the French custom houses there, in the absence of the consignee, sent for their *Expert*, to examine the goods, who declared that the sugars came from the English Colonies; upon the declaration of this *Expert*, they were consequently sequestered, and the samples were taken out of each hogshead to be sent to the custom houses at Paris.

The consignee contended against the illegality of the proceedings, alleging that the Law allowed two *Experts*, that is, *one* of his own choosing; he also desired that the samples of sugar which were to be forwarded to Paris, should be taken out of the hogsheads in his presence; but finding all remonstrances ineffectual, he sent for a Notary to protest against their conduct. But the consignee as well as the Notary, were threatened with a jail if they attempted to make a protest. On the arrival of the sugars at Paris, the custom house officers of course declared them to be from the English colonies; but the case was referred to the Council of Prizes, to examine the documents which were produced by Messrs. Faesch, to prove that the sugars were *bona fide* from the Havannah. These were a certificate from Messrs. Hope and Co. accompanied with the bills of lading and invoices from America. A certificate from the ship broker at Amsterdam, proving that the aforesaid sugars were landed from American ships coming from America, was

also produced. However these proofs were of no avail. The 108 hogsheads of sugar were confiscated.

MR. DE LA GRANCE, Counsel for the Claimants.

MR. LE PROCUREUR GENERAL, for the Government.

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## EXTRACTS OF THE CONVENTION

Between the French Republic and the United States of America, signed at Paris the 8th VENDEMAIRE, year 9, (30th Sept. 1800) by JOSEPH BONAPARTE, FLEURIEU, and ROEDERER, on the one part, and Messrs. ELLSWORTH, MURRAY, and DAVIE, on the other.

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AFTER the usual preamble and three articles, which have no relation with the subject before us, we will begin with—

ART. IV. On both sides, proofs of the neutrality of property shall be required by a passport in the following form :

“ To all to whom these presents shall come. Be it known that freedom and permission have been granted to ———, master or commander of the ship ———, of ———, bound to ———, laden with ——— ; that after his ship has been visited, and before his departure, he shall make oath before the officers authorized for that purpose, that the said ship belongs to one or more of the subjects of ———, whose agreement shall be subjoined at the bottom of the passport ; likewise, that he will observe, and make be observed by his crew, the maritime ordinances and regulations ; and he shall deliver a list, signed and attested by witnesses, containing the names of the crew of the ship, and of all those who shall embark with him, &c. &c.”

And this passport shall of itself be sufficient, notwithstanding all regulations to the contrary, without any necessity of renewing or revoking it.

With regard to the cargo, the proofs shall be certificates, containing an account of the place from which the vessel has sailed, and that to which she is bound, so that prohibited and contraband goods may be distinguished by certificates, which certificates shall have been made by the officers of the place from which the vessel shall have sailed in the usual form of the country; and if these passports or certificates, or either of them, have been destroyed by accident, or seized by violence, the want of them may be supplied by all the other proofs of property admissible according to the general usage of nations.

ART. V. VI. and VII. Foreign to our subject.

ART. VIII. In order mutually to promote the operations of commerce, it is agreed, that if (which the Lord forbid!) war should break out between the two countries, there shall be allowed mutually to the merchants and other citizens, or respective inhabitants, six months after the declaration of war, during which period they will have the permission to retire with such goods and effects as they may be able to carry off, or to sell the whole, agreeably to their own option, without the interposition of any restraint. *Not only their goods, much less their persons, can be seized on, during the prescribed period of six months. On the contrary, they shall be furnished with passports to secure their safe return home!* These passports shall avail them as guarantees against every insult and seizure on the part of privateers, who may attempt to capture their goods and their persons; and if, during the above term, they shall have received any injury or damages from any of the parties, abettors, &c. they shall receive complete satisfaction.

ART. IX. X. XI. Foreign to the subject.

ART. XII. The citizens of the two nations may convey their ships and merchandize, excepting always contraband goods, into any port belonging to the enemy of the other country. They may navigate and trade, in full freedom and security, with their merchandize and ships in the country,

ports, &c. of the enemies of either party, without encountering any obstacle or controul, and not only pass directly from the ports and fortresses of the enemy above-mentioned into neutral ports and fortresses; but moreover, from any place belonging to an enemy into any other appertaining to another enemy, whether it be or be not subjected to the same jurisdiction, unless these ports or fortresses be actually besieged, blockaded, or invested. (The remainder of this article enjoins vessels not to enter any port actually besieged or blockaded, but to veer off.)

ART. XIII. Describes what is contraband, but stipulates that the ship with which they were freighted, as well as the rest of the cargo, shall be regarded as free, and in no manner shall be vitiated by the contraband goods, whether they belong to many, or to one and the same proprietor.

ART. XIV. It is stipulated by the present treaty, that free ships shall likewise ensure the freedom of goods, and that all things on board shall be reckoned free belonging to the citizens of one of the contracting parties, although the cargo, or part of it, should belong to the enemies of the two; it being understood nevertheless, that contraband goods will always be excepted. It is likewise agreed, that this freedom shall extend to the persons of those who shall be found on board the free ships, although they should be enemies to one of the two contracting parties; and it shall not be lawful to take them from the said free ships, at least if they are not soldiers, and actually in the service of the enemy.

ART. XV. It is agreed on the other hand, that all goods found, put by the respective citizens on board ships belonging to the enemy of the other, or to their subjects, shall be confiscated without distinction of prohibited or non-prohibited; and, likewise, if they belong to the enemy, to the exception always of effects and merchandizes which shall have been put on board the said ships before the declaration of war, or even after the above declaration, if it could not be known at the moment of lading; so that the merchandizes of the citizens of the two parties, whether they are contraband or otherwise, which, as

has been said, shall have been put on board a vessel belonging to an enemy before the war, or even after the declaration of war, when it was not known, shall in no ways be subject to confiscation, but shall faithfully and *bona fide* be restored, without delay, to their proprietors, who shall claim them; it being nevertheless understood, that it is unlawful to carry into the enemy's ports any goods that are contraband. The two contracting parties agree, that two months having elapsed after the declaration of war, their respective citizens, from whatever part of the world they come, shall not be allowed to allege the ignorance in question in the present article.

ART. XVI. Foreign to the subject.

ART. XVII. And to avoid captures upon frivolous suspicions, and to prevent the mischief which results from them, it is agreed, that when one of the two parties shall be at war, and the other neutral, the vessels of the neutral party shall be furnished with passports similar to those specified in Article IV, so that it may thus appear that the vessels belong truly to the neutral party. These passports shall be valid for any number of voyages; but they shall be renewed every year if the vessel returns home during the course of a year.

If these ships are laden, they shall be furnished not only with the passports above-mentioned, but likewise with the certificates described in the same article, so that it may be known whether any contraband merchandize is on board. There shall not be demanded any other document, notwithstanding all usages to the contrary; and if it does not appear by these certificates that there is any contraband merchandize on board, the vessels shall be allowed to proceed on their voyages. If, on the contrary, it appears by these certificates that the vessels have contraband merchandizes on board, and the masters offer to deliver them up, the offer shall be accepted, and the ship shall be left at liberty to proceed on her voyage, at least, if the quantity of the contraband merchandize is not too great to be conveniently taken on board a ship of war or privateer; in that case, it shall be lawful to take the ship into a harbour, there to deliver the said merchandize.



If a ship is found without the passport, or the certificates thus demanded, the affair shall be examined by the judges or the competent tribunals; and if it appears, by other documents or proofs admissible by the usage of nations, that the ship belongs to the citizens of the neutral party, she shall not be condemned, but shall be set at liberty with her cargo, the contraband goods excepted, and shall be at liberty to proceed on her voyage.

If the captain, named in the passport of the ship, should die, or cease to command her from any cause, and another is appointed in his stead, the ship and her cargo shall not be less secure, and the passport shall remain in all its force.

ART. XVIII. If the ships of the citizens of either party are met on the coast, or on the high seas, by any ship of war or privateer of the other, to prevent all disorder, the said ships of war or privateers shall keep out of cannon shot, and shall send their boats to the merchant vessel they shall meet; and it shall not be lawful for more than two or three to go on board, and ask the master to produce the passport concerning the property of the ship, drawn out according to the formula prescribed in Article IV. as well as the certificates above-mentioned, with regard to the cargo. It is expressly agreed, that the neutral shall not be obliged to go on board the visiting vessel, there to produce his papers, or give any information whatever.

ART. XIX. Foreign to our subject.

ART. XX. Where vessels shall be taken or stopped, under pretence of carrying some contraband article to the enemy, the captors shall give a receipt of the papers of the ship which he shall retain; which receipt shall be joined to a correct invoice of the said papers. It shall not be permitted to force nor to break open drawers, chests, trunks, boxes, bales, or vases, found on board of the said ship, nor to carry off the least article of the effects before the cargo has been disembarked in presence of the competent officers, who shall make an inventory of the said effects. They cannot in any manner be sold, exchanged, or alienated, at least till after a legal process, the competent judge or judges have passed sentence of

confiscation, (always excepting, however, the ship and other articles which she contains.)

ART. XXI. That the ship and cargo may be watched over with care; and, to prevent waste, it is determined that the master, captain, or supercargo, of the captured vessel shall not be removed from on board, either while the ship shall be at sea, after having been taken, or during the proceedings which take place against her, her cargo, or something relating to her.

When the ships belonging to the citizens of either of the parties shall be taken, seized, or detained, to be tried, her officers, passengers, and crew, shall be treated with humanity. *They shall not be imprisoned nor stripped of their cloaths, nor of money for their private use, which must not exceed, for the captain, supercargo, or mate, 500 dollars each, and for the sailors and passengers 100 dollars each.*

The remaining Articles of the Convention are foreign to our subject.

## CONCLUSION.

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A PERUSAL of the cases before mentioned I have no doubt, will satisfy every impartial reader that I have not, in the previous statement, asserted any thing that is not supported by facts. The contrast between the conduct of Great Britain and of France towards America, will appear in a striking point of view. It will not only appear that the Orders in Council were extorted by the Decrees of the French ruler as a measure of self-defence against those decrees ; that they were, under all the circumstances, not only moderate, but even passive ; and that the mode in which they have been acted upon, contrasted with the conduct of the French cruizers, and the subsequent decisions of the Council of Prizes, deserves, in an exemplary degree, the praise of forbearance.

In two cases, in particular, I have given the general substance of the discussion, which will shew the little regard felt by the Council of Prizes to the general law of nations, to solemn treaties between nation and nation, and even to the equitable interpretation of the tyrannical and absurd decrees of their own imperious master.

The other cases contain little more than a short statement of facts, on which the discussion was always to the same purpose, and always with the same effect, *condemnation*. I could have added double the number of similar cases ; but I did not wish to tire the patience of the reader.

If to the above cases any further proof be required of the existence of a depredatory system of the French government against the commerce of America, and of the servile submission of the government of the latter to the wanton oppression of the former, let the following statement be read and considered with attention.

About 18 months ago a *general embargo* was put on all American vessels then in the ports of France and Italy. It is true that about six months ago, the embargo was proposed to be raised ; but it was on a condition the most extraordinary that ever entered into the contemplation of any government to suggest.

It was proposed to General Armstrong, that he should sign a bond, by which he should guarantee the performance of the voyage of the embargoed vessels directly to America, and their not touching at any British port or going to any of the English colonies. Let those who pretend to excuse the Decrees of Bonaparte, and to stigmatize the British Orders in Council in answer to these

decrees, state, if they can, any instance of such a proposition having ever before been made to the accredited ambassador of an independent state.

It was, perhaps, expected, that General Armstrong would sign such a bond, in order to procure the liberation of his countrymen. He was, however, too cautious to fall into the snare. He probably saw, that even if all these ships should arrive in America, and proof could have been furnished, a negative proof, that not one of them had touched at a British port, or at any of the English colonies, yet still the ingenuity of the French government would have invented some pretence for calling upon him for the penalty of his bond. This gentleman declined the proposition, and not one of the American vessels were released from the embargo, except the *Fair American*, which was permitted to sail from Dunkirk last May, with a messenger and dispatches.

This embargo approached very nearly to a declaration of war by the French government against America; but what remonstrance did the American government make against it; nay, what notice have they taken of it at all\*?

\* I am persuaded that most of the governments who have their ministers in Paris, receive but little information from them as to the real character of the tyrant. The members of the *Corps diplomatique* in that city blend the entertainments of every kind with which it abounds, and the agreeable manners of its inhabitants, with the diplomacy of the Tuilleries. The plea-

But this is not a singular instance of the forbearance of the American and other governments falsely called neutral, in respect to the enormities committed against them by the tyrant of the continent and his agents. A French Admiral, *Willamez*, about three years ago, burned all the ships of neutral nations which he met with at sea, and their cargoes : he had indeed the humanity *not to burn their crews* ; but took them on board his own ships, to prevent their giving information to the English. But we have not heard that any remonstrance has been made against this, though the Continents both of Europe and America resound with complaints against the predominancy of England, and she is called the tyrant of the seas. She is indeed the *mistress* of the seas, and may she long preserve that prerogative ; but, in proportion as she is powerful, she is just : let those who are acquainted with the modes of proceeding, and the decisions given in the Court of Admiralty in Doctors Commons, compare them with those of the Council of Prizes at Paris, and then pronounce *who is the tyrant of the seas*.

I have given in the preceding pages some of the articles *verbatim* of the treaty of the year 9,

asures which they derive from the former, make them, in a great measure, forget the horrors of the latter ; indeed, it can scarcely be credited that, in one of the most delightful cities in the universe, where there is so much learning and civilization, a *Foreign* tyrant is agitating and organizing the misery of mankind, and is endeavouring to bring Frepchmen back to the dark ages.

between France and America, on which the learned advocate reasoned so ably in the cases which I have detailed. That I have not suppressed any thing that might contribute to a contrary conclusion to that which I have drawn, will be evident to any one who will take the trouble to read the treaty at full length as given in the Annual Register for the year 1800.

Were Napoleon conscious that he is bound by the ordinary rules of justice between man and man, and between nation and nation, I might attempt to reason with him on the enormity of his conduct ; but from an insatiable ambition to rule, a desire of plunder, and a hardly interrupted progress in those objects, he has adopted the maxim *per fas et nefas ruere*: it is not with him *fiat justitia ruat cælum*, but *quocunque modo rem*.

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SINCE the greater part of these sheets have been put to press, a diplomatic letter from the French Minister of Foreign Affairs addressed to the American Minister at Paris, has appeared in the London papers of the 16th Oct. last.

This document commences with assuring the Americans, " that France admits the principle that the Flag protects the Trade." After plundering the Americans, not in *flagrante bello*, but while

peace subsisted between the two countries, to the amount of 4 millions sterling; now that no further booty is likely to present itself under the Berlin and Milan decrees, the Americans are *now* told that "free bottoms make free goods:" This suits the *present* purpose of the *Grand Usurpateur*. But I am sure the Americans will find as little security from this, as they did from the letter of the Minister of Marine, by which it was declared that the decree of Berlin was not intended in contravention of the existing treaties with America\*.

The letter goes on thus:—Judge, you who have a knowledge of the history of the few last years: "In *all* her conquests, France has considered *sacred* † private property, deposited in the warehouses of the vanquished States, and such have had the complete disposal of matters of trade; and at this moment convoys by land of merchandize, and

\* The letter alluded to is signed by Monsieur *Cham-pagny*, the present Minister for Foreign Affairs; but I am convinced, from internal evidence, that it is the production of Monsieur *Le Conseiller d'Etat Hauterive*.—In the year 1800, I translated into English his book, intitled "*L'Etat de la France à la fin de l'an VIII.*" which contains the very principles now held out to the world in the letter in question. During the first twelve months of my residence in Paris, I was very intimate with *Monsieur Hauterive*: and from that intimacy I take upon myself to say, that, though he published such opinions to the world, he is far from *approving* of them. He is too enlightened a statesman, and too well acquainted with the writings of Grotius, Puffendorf, Vattel, &c. to say that "free bottoms ought to make free goods."

† I suppose the writer borrowed this word from the Latin *sacrum*, the original meaning of which is something devoted to the Gods, something with which nobody must interfere, but the *vicegerent* of Europe.



“ especially of cotton\*, are passing through the French army and Austria, to proceed to the destination which *commerce* directs.”

Never was there a more impudent assertion made in the face of the world, than that contained in the first part of this paragraph; facts which have happened within these two or three years give it the complete lie! When the French entered Leipzig, after the battle of *Jena*, goods purchased from England, *paid for* by the merchants of Leipzig, and of course *their* property, were confiscated as English property, *because* they had come originally from England, as it was *pretended*; but more probably because they were a valuable object of plunder.

At Hamburg, at Bremen, at Rostock, and at Weimar, all neutral cities, the satellites of Napoleon not only seized as *British*, property *bona fide* belonging to the merchants of those towns, and long before paid for, but even made them pay a penalty for having dealt in British goods; when this measure was submitted to, and when another Governor was appointed, a new penalty was inflicted on the merchants of those unfortunate Hanseatic

\* Yes, especially of *cotton*, because that article is wanted for the manufacturers of Paris, but the moment it arrives on the frontiers it will be seized by the officers of the Custom Houses, as contraband, and confiscated to the State, as was the case with the cottons of Messrs. *Buff* and Co.

towns, and a third time they were compelled to yield to the extortions of the French Satraps\*!

“Private property sacred!” What is sacred to a man who has reduced MURDER TO RULE, AND

\* I cannot avoid taking notice of a well written and spirited letter of a Mr. Charles Villars†, which was circulated in print among the Author’s friends about the time of the transactions at Lubec, addressed to Madame *Fanny Beauharnois*, aunt of General *Beauharnois*, first husband of the Empress *Josephine*.

After the battle of Jena (says Mr. Villars), the Prussian General Blucher retreated from that scene of carnage, and got to Lubec, whither he was pursued by three *corps d’armées* commanded by *Soult*, *Bernadotte*, and *Murat*. Lubec, though a fortified town, was but ill prepared to resist the entrance of the Prussians; the latter got possession of it by a *coup de maître*. They then put it in a state of defence. The French got possession of it, and in violation of a capitulation, by which the lives of the Prussians were to be spared, all of that nation who could be found were massacred. Had the matter rested here, Mr. Villars would not have exposed his life by publishing the letter in question; but horrible to relate, the harmless and inoffensive city of Lubec, for not having made an impossible defence against the Prussians, was given up for three days to be plundered, and submitted to every kind of cruelty that could disgrace the history of modern times. Not a female of the most tender age escaped violation. Even the hospitals and the very madhouse were not respected!

Mr. Villars observes that for thirty years to come, every family of that unfortunate city will have reason to recollect the three days that the French army passed there. He bestows great eulogiums on *Bernadotte*; but says that *Soult* and *Murat* gave every encouragement to their licentious followers.

I have entered into these details, because I know there are some persons in this country very little disposed to believe any thing against the *Philanthropy* of their demi-god Napoleon.

† Mr. Charles Villars was originally of Metz, but was at this time resident at Lubec, and an inmate of Mr. *Matthias Rodde*, a senator and respectable merchant of that city for twenty years. Mr. Villars is a corresponding member of the National Institute, and about seven years ago, obtained from that learned body a prize for a work, which he published, “On the good Effects of the Reformation of Luther,” and which has been translated into English.

ROBBERY TO SCIENCE? Are treaties and alliances respected by him? Are monarchs safe who have even been forced into an alliance with him? Is there an honest heart which does not still burn with indignation at his conduct towards the deluded Royal Family of Spain? He was not content with depriving them of their kingdom, but even plundered them of their *private* property.

The following case, I think, deserves attention, to shew how Bonaparte respects private property.

When he was at *Burgos*, he published in one of his bulletins \*, that he found there many thousand bags of wool which he said had been purchased for English account. It is true, he *did* find wool at *Burgos*, but the whole of it belonged to French merchants, among others, to Mr. *Oberkampf*, an eminent manufacturer of woollen cloth in Paris, but it was no protection against confiscation, because it was alleged that it was found upon enemy's territory!

And what does Bonaparte think of territory? Every place is enemy's territory where a person resides who disapproves of his conduct, or is ob-

\* To shew what degree of credit is attached in France to Bonaparte's Bulletins, the fish women of Paris (*Les femmes de la Halle*) when they call in question a person's veracity say to them, "*Vous mentez comme un Bulletin !!!*" (You lie like a Bulletin)—Hear this, ye *Quidnuncs* of the Stock Exchange!

noxious to him! Thus *Baden* was violated when the *Duc D'Enghien* was arrested and murdered! so was *Ulm*, when the patriotic bookseller *Palm* was seized and executed because he, as a German, published a German Patriot's Opinions on the tyrant's conduct in that unfortunate country. He held out a pardon to him, if he would give up the author. The man refused. His firmness and patriotism would have saved him, if his persecutors had had an exalted mind; however, he who delights in blood and cruelty would add that murder to the long catalogue of his crimes!

I cannot conclude without expressing my hope, founded upon an intimate knowledge of the *Bonaparteian System*, that no English Minister will be found who will ever recommend his Majesty to make a peace with the man who is at the head of the *French Populace!* Yes, and I repeat the word *populace*, because no honest Frenchman regards Bonaparte as his Sovereign. In no respectable family in Paris is his name ever mentioned *but with horror and disgust*. And were a foreigner in France to speak well of him, the Police would lock him up and suspect him to be a foreign spy, as they are persuaded that no man who is *sane* or *honest* can speak well of such a fiend! Let the people of England be prepared then to continue this glorious struggle *pro aris et focis* until his extermination, which may not be far off! The peo-

ple of Rome endured *Nero's* and *Domitian's* cruelties for a time ; at last however these tyrants fell ! The people of England are taxed, it is true, but let them consider that it is only *an annuity we must pay to Providence on the life of Bonaparte*, and our war taxes should be termed, **BONAPARTE'S LIFE ANNUITY !!**

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P. S. Accounts have just been received from America, that the British Envoy, Mr. Jackson, on his arrival in that country, was hooted by the populace, that he was burnt in effigy, and that the people called out, " No Copenhagen Jackson," &c.

Newspapers have related it, and I *must* believe it, but really it is scarcely credible, that because the measures which the British Government adopted towards the *Danes* are disapproved of by the people of America, that an Envoy who executed the orders of his Government is to be mal-treated by the *Populace* of another country.

As it is possible that this pamphlet may fall into the hands of the *enlightened* citizens of the United States, I will make them acquainted with

the character of *Monseigneur Le Général Thurreau, Grand Officier de la Legion d'Honneur, Ambassadeur de Sa Majesté l'Empereur des Français et Roi d'Italie près les Etats Unis d'Amerique!*

EXTRACTED FROM THE MONITEUR.

No. 11. Year 3, accused in the Convention by *Merlin* of Thionville, that he in the absence of the representative *Carrier*, caused the inhabitants of several districts to be assembled, and then had them all shot to the number of twelve thousand men, women and children !!!

No. 12. *Alquier*, a Deputy, produced an order signed by General *Thurreau*, addressed to General *Moulins*, and sent to him by his Aide de Camp *Dodum*, which ran thus—

“General *Moulins* is to proceed with his column to *Montagne*, to disarm its inhabitants and annihilate (*égorger*) every soul without distinction of age or sex—In this sitting his accusation was decreed.”

No. 57, year 4. In the Council of Five Hundred, on a debate which took place whether *Thurreau* should be tried by a Council of War or by the Civil Law, *Chapelain* a Deputy said, “*Thurreau* has committed the most unheard of crimes in

*La Vendée ; by his orders, even old men, women and children were massacred !”*

*Official, a Deputy, observed, that entire parishes (municipalities) were shot by his orders !*

No. 92, year 3. In the trial of *Carrier* the Deputy, for committing cruelty in *La Vendée*, *Thurreau* is accused of having signed orders for murdering men, women, and children ! In the course of that trial several witnesses deposed that *General Thurreau*, after an excursion in *La Vendée*, returned in triumph to *Rennes*, and wore as trophies the ears and hearts of *Chouans* pinned to his coat, and in the lop of his hat\* !!!

*Thurreau* was tried in the time of the Directory : he was suspended from his functions and never employed by that Government, but was brought again into notice by *Napoleon Bonaparte*, he is one of his *Grand Officers* of the *Legion of Honor* and a *Monseigneur* !!!

Which of the two Ministers deserves most to be hooted by the *enlightened Republicans* of the *United States* ?

I cannot let this opportunity pass without

\* See the *Moniteur* containing the proceedings against *Carrier* and the *Revolutionary Committee* of *Nantes* !

taking notice of the Copenhagen expedition, which a French Minister in my hearing termed a "*Coup de Maître en Politique.*"

After the peace of *Tilsit*, Bonaparte wished to occupy the Danish Islands, *Zealand* among the rest. Two of his naval officers, viz. Rear-Admiral *Majendie*, who was in Portugal when *Junot* was expelled, and formerly captain of Admiral *Villeneuve's* ship, at the battle of *Trafalgar*, and Captain *Bergeret*, many years a prisoner of war in this country in the time of the Directory, and who was four years ago made prisoner by the British in the East-Indies, and sent to France on his parole, but *not exchanged to this day*, were appointed Commissaries to superintend the equipment of the Danish Fleet: To every *Danish* ship there was a *French* captain appointed; a great number of Danish and Prussian seamen, the former taken on board of British ships, and the latter, which were prisoners of war, confined at different *dépôts* in France, were sent from thence to Copenhagen escorted by French gens d'Armes!!! The Danish fleet would have been in the hands of *Bonaparte* either by treaty, by *ruse*, or by robbery. The foresight of an active English ministry prevented it: Had no measures been taken to prevent it, and had the Danish fleet fallen into Bonaparte's power, the *same persons* who *now* accuse the English Ministers for taking the Danish



Fleet would *then* have accused them with the want of foresight. If Bonaparte's partizans in England raise a clamour against our government for this "*Coup de Maitre,*" Bonaparte himself *knows they were right.*—A question may arise, can Bonaparte have partizans? to which I reply, in the words of the Deputy *Courtois*, who made a report to the Convention on the papers found in the possession of *Maximilian Robertspierre*, "*Si la Peste avait des Pensions à donner, elle trouverait aussi ses adoreurs !!!*"

THE END.

